MONTANA LEGISLATIVE HISTORY

Chapter 516 1995

Bill H 200 S _____ Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Labor & Employment		
Hearing Date(s)	1-19	___C	Hearing Date(s)	3-7	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
	1-24	___C		3-9	___C
Date Out	1-24	___C	DATE OUT	3-9	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Free Conference Committee 4-7 : The Law Library has no minutes.

HB 199 INTRODUCED BY ELLIOTT, ET AL.

MAKE PERMANENT THE TAX CREDIT FOR CONTRIBUTIONS MADE TO GENERAL ENDOWMENT FUNDS OF MONTANA UNIVERSITY SYSTEM FOUNDATIONS AND MONTANA PRIVATE COLLEGE FOUNDATIONS

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO TAXATION		
1/24	HEARING		
1/27	COMMITTEE REPORT—BILL PASSED		
1/28	2ND READING PASSED	82	12
1/30	FISCAL NOTE REQUESTED		
1/30	3RD READING PASSED	74	23
2/01	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
3/06	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED	48	0
3/10	3RD READING CONCURRED	42	1
	RETURNED TO HOUSE		
3/13	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/14	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 152		
	EFFECTIVE DATE: 03/16/95		

HB 200 INTRODUCED BY BERGMAN, ET AL.

GENERALLY REVISE THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO BUSINESS & LABOR		
1/16	FISCAL NOTE REQUESTED		
1/19	HEARING		
1/23	FISCAL NOTE RECEIVED		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	FISCAL NOTE PRINTED		
1/30	2ND READING PASSED AS AMENDED	97	2
2/01	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/02	FIRST READING		
2/02	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/17	2ND READING CONCURRED	47	0
3/18	3RD READING CONCURRED	46	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	MOTION FAILED TO CONCUR WITH AMENDMENTS ON 2ND READING	22	75
3/31	CONFERENCE COMMITTEE APPOINTED		
4/05	HEARING		
4/06	CONFERENCE COMMITTEE DISSOLVED		
4/06	FREE CONFERENCE COMMITTEE APPOINTED		

4/07	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/08	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	67	32
4/10	RECONSIDERED PREVIOUS ACTION AND PLACED BACK ON 2ND READING	51	47
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	74	25
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	76	22
	SENATE		
4/04	CONFERENCE COMMITTEE APPOINTED		
4/06	CONFERENCE COMMITTEE DISSOLVED		
4/06	FREE CONFERENCE COMMITTEE APPOINTED		
4/07	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/08	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
4/10	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/13	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 516		
	EFFECTIVE DATE: 04/25/95—SECTIONS 5, 12, 21 & 24-28		
	EFFECTIVE DATE: 07/01/95—SECTIONS 1-4 & 6		
	EFFECTIVE DATE: 10/01/95—SECTIONS 7-11, 13-20, 22 & 23		

HB 201 INTRODUCED BY ELLIS, ET AL.

REQUIRE THAT ANNUAL SUSTAINABLE YIELD BE USED AS A FACTOR IN MANAGEMENT OF FORESTED STATE TRUST LANDS

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO NATURAL RESOURCES		
1/16	FISCAL NOTE REQUESTED		
1/20	HEARING		
1/20	SPONSOR FISCAL NOTE RECEIVED		
1/23	FISCAL NOTE PRINTED		
1/24	COMMITTEE REPORT—BILL PASSED		
1/30	REREFERRED TO EDUCATION & CULTURAL RESOURCES		
2/03	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	65	34
2/11	MOTION FAILED TO TAKE FROM 3RD READING AND REREFER TO AGRICULTURE	32	55
2/18	3RD READING PASSED	63	34
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO NATURAL RESOURCES		
2/27	REVISED FISCAL NOTE RECEIVED, AS AMENDED BY EDUCATION & CULTURAL RESOURCES COMMITTEE		
3/01	REVISED FISCAL NOTE PRINTED		
3/03	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	REVISED FISCAL NOTE REQUESTED		
3/28	2ND READING CONCURRED AS AMENDED	29	20
3/29	3RD READING CONCURRED	29	21
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	REVISED FISCAL NOTE PRINTED		
4/03	2ND READING AMENDMENTS CONCURRED	80	20

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
-- REREFERRED ---- DATE READ

HB0193		1/13			DO PASS	1/18	VOTE: 18-0	1/18
HB0200	BERGMAN, ELLEN	1/14	1/19	GENERALLY REVISE WORKERS' COMPENSATION ACT	PASS AS AMENDED	1/24	VOTE: 18-0	1/25
HB0203	MCKEE, JEANETTE	1/14	1/20	ELIMINATE REQUIREMENT THAT LIMOUSINE SERVICE APPLICANT SHOW PUBLIC NEED	DO PASS	1/24	VOTE: 14-4	1/25
HB0207	BARNETT, JOE	1/14	1/20	PROHIBIT MERGER OF STATE CHARTERED & NATIONAL BANK WITH OUT-OF-STATE BANK	DO PASS	1/25	VOTE: 16-2	1/26
HB0211	SMITH, LIZ	1/14	1/19	REVISE WORK COMP BENEFIT ELIG DATE FOR SOME INJURIES RE: AGGRESSIVE BEHAVIOR	TABLED ON	1/19	VOTE: 17-1	
HB0216	COCCHIARELLA, VICKI	1/14	1/19	CLARIFY STATUS OF SPOUSE UNDER WORKERS' COMPENSATION	DO PASS	1/19	VOTE: 18-0	1/19
HB0223	WYATT, DIANA	1/16	1/20	EXEMPT INVESTIGATORS IN FEDERAL CASES FROM OCCUPATIONAL LICENSURE	TABLED ON	1/24	VOTE: 18-0	
HB0234	HIBBARD, CHASE	1/25	1/30	REQUIRE CERTAIN LOAN & CREDIT AGREEMENTS BE WRITTEN TO BE ENFORCEABLE	PASS AS AMENDED	2/1	VOTE: 13-5	2/02
HB0239	HURDLE, JOAN	1/17	1/23	CLARIFY DEFINITIONS ASSOC WITH PUBLIC SWIMMING POOLS & PUBLIC BATHING AREAS	PASS AS AMENDED	1/27	VOTE: 18-0	1/28
HB0241	CAREY, BILL	1/17	1/23	CREATE COOPERATIVE AFFORDABLE HOUSING CORP ACT FOR LOW & MIDDLE INCOME	TABLED ON	2/13	VOTE: 13-5	
HB0242	CAREY, BILL	1/17	1/23	TENANTS' RIGHT TO PURCHASE BEFORE PROPERTY IS OFFERED TO OTHERS	TABLED ON	1/25	VOTE: 18-0	
HB0243	MENAHAN, RED	1/17	1/19	ALLOW ELECTRICIANS TO RENEW LICENSE WITHOUT EXAM WITHIN 1 YR UPON FEE PMT	PASS AS AMENDED	1/19	VOTE: 17-1	1/19

HOUSE BILL NO. 200

INTRODUCED BY Ellen Bergman Hibbard Bought Bartlett Cocchiarella

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; CLARIFYING THE LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES; PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315, 39-71-318, 39-71-401, 39-71-405, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507, 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103, 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Aid or sustenance" means any public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the ~~Montana~~ department ~~of labor and industry~~. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(3)~~(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

~~(4)~~(5) "Casual employment" means employment not in the usual course of trade, business,

profession, or occupation of the employer.

~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(6)~~(7) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

~~(8)~~(9) "Department" means the department of labor and industry.

~~(9)~~(10) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.

~~(10)~~(11) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(12) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(11)~~(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(12)~~(14) "Invalid" means one who is physically or mentally incapacitated.

(15) "Limited liability company" is as defined in 35-8-102.

~~(13)~~(16) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(14)~~(17) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(18)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum medical healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity, but the physical restriction impairs the worker's ability to work.

~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

city, city under a commission form of government or special charter, town, or village.

~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~as~~ that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(28)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(31)~~(35) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies ~~therein~~ and ~~every~~ each person, ~~every~~ each prime contractor, and ~~every~~ each firm, voluntary association, limited liability company, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee ~~thereof~~;

(b) any association, corporation, limited liability company, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, or corporation, other than a

temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, limited liability company, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 3. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has

elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership, ~~or~~ sole ~~proprietorship~~ proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, ~~or~~ the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, ~~or~~ proprietorship, or limited liability company business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners, ~~or~~ sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, ~~or~~ sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1½ times the average weekly wage, as defined in this chapter.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

less than $200 a week and not more than 1½ times the average weekly wage, as defined in this chapter.

~~(5)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

~~(6)~~(7) An employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(8)~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the election under subsection ~~(7)(d)~~ (8)(d)."

Section 4. Section 39-71-315, MCA, is amended to read:

"**39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which

compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 5. Section 39-71-318, MCA, is amended to read:

"**39-71-318. Hearings -- rules of evidence -- conduct.** (1) The statutory and ~~common law~~ common-law rules of evidence do not apply to a hearing before the department under this chapter.

(2) A hearing under this chapter may be conducted by telephone or by videoconference."

Section 6. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of ~~any~~ a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with ~~any~~ a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) ~~any~~ employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, ~~or~~ a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A ~~private~~ corporation or a manager-managed limited liability company shall provide coverage for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an~~

~~officer of~~ A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect ~~not to be bound as an employee under this chapter~~ coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice~~, on a form provided by the department, served~~ in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company ~~employer and to the department~~; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company ~~employer, to the department,~~ and to the insurer.

(b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not effective and the ~~officer~~ employer shall again serve notice ~~as provided~~ to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the ~~officer~~ employer elects ~~not~~ to be bound.

~~(c)~~(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of ~~excluding~~ exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager ~~to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202 if the officer falsifies the notice~~ to exemption from coverage.

~~(5)~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 7. Section 39-71-405, MCA, is amended to read:

"**39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with an independent contractor to have work performed of a kind ~~which~~ that is a regular or a recurrent part of the work of the trade, business, occupation, or profession of ~~such~~ the employer is liable for the payment of benefits under this chapter to the employees of the contractor or the subcontractor if the contractor or subcontractor has not properly complied with the coverage requirements of the ~~Worker's~~ Workers' Compensation Act. ~~Any~~ An insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor or subcontractor primarily liable ~~therein~~.

(2) ~~Where~~ When an employer contracts to have any work to be done by a contractor, other than an independent contractor, and the work ~~so~~ contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work ~~so~~ contracted to be done ~~shall~~ may not be construed to be casual employment. ~~Where~~ When an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees ~~shall~~ come under that plan of compensation adopted by the employer.

(3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, ~~where~~ when the work ~~so~~ contracted to be done is casual employment as to ~~such~~ the employer, then the contractor ~~shall become~~ is the employer for the purposes of this chapter."

Section 8. Section 39-71-432, MCA, is amended to read:

"**39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together with the approval of the department to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

Section 9. Section 39-71-433, MCA, is amended to read:

"**39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of the department, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) To be eligible to join a new group that is forming, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.

(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.

(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.

(5) A group certified under this section may add additional members without approval from the department if the additional members meet the specific criteria identified in the original application and any modifications to the criteria, as approved by the department.

~~(5)~~(6) A group certified under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

~~(6)~~(7) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

~~(7)~~(8) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department."

Section 10. Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~ payments ~~as~~ that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. ~~No lump-sum~~ Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of administration of the fund must be paid out of the money in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 11. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund -- option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

(2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.~~

~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.~~

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ must be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's

beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

Section 12. Section 39-71-507, MCA, is amended to read:

"**39-71-507. Department to order uninsured employer to cease operations -- noncompliance with order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it may order the person, business, or other entity functioning as a prime contractor to cease all operations until the uninsured employer has elected to be bound by a compensation plan.

~~(2)~~(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than $1,000 per day for each day of violation.

~~(3)~~(5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

~~(4)~~(6) The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ (3) through (5) of this section are not mutually exclusive and may be pursued concurrently."

Section 13. Section 39-71-516, MCA, is amended to read:

"**39-71-516. District court venue and jurisdiction for independent cause of action.** An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 ~~must~~ shall bring ~~such~~ the action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant ~~such~~ interim relief ~~as~~ that it considers appropriate, including but not limited to injunctive relief, attachment, or receivership. The court may request the workers' compensation judge to determine the amount of recoverable damages due to the employee."

Section 14. Section 39-71-710, MCA, is amended to read:

"**39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~ permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 15. Section 39-71-721, MCA, is amended to read:

"**39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum

weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of ~~his~~ death.

(3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary ~~as defined in 39-71-116~~, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

(6) In all cases, benefits must be paid to beneficiaries~~, as defined in 39-71-116~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death.~~"

Section 16. Section 39-71-723, MCA, is amended to read:

"**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ when there is more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof shall be~~ is a question of fact for determination by the department."

Section 17. Section 39-71-737, MCA, is amended to read:

"**39-71-737. Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits~~, and wage supplement and partial rehabilitation benefits may be paid concurrently~~."

Section 18. Section 39-71-902, MCA, is amended to read:

"**39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers.** (1) In ~~every~~ each case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess ~~every~~ each insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 19. Section 39-71-1108, MCA, is amended to read:

"**39-71-1108. Physician self-referral prohibition.** (1) Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

(2) Subsection (1) does not apply to care or services provided directly to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 20. Section 39-71-2103, MCA, is amended to read:

"**39-71-2103. Employer permitted to carry on business and settle directly with employee -- individual liability.** (1) If ~~such~~ the employer making ~~such~~ the election ~~shall be~~ is found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on ~~his~~ business for the fiscal year within which ~~such~~ the election is made and ~~such~~ proof filed, or the remaining portion of ~~such~~ the fiscal year, and to make ~~such~~ payments directly to ~~his~~ the employees as they may become entitled to receive the ~~same~~ payments.

(2) Each individual employer in an association, corporation, limited liability company, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, limited liability company, or organization under this chapter. An association, corporation, limited liability company, or organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability coverage in amounts and under ~~such~~ conditions as provided by rules of the department."

Section 21. Section 39-71-2411, MCA, is amended to read:

"**39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, ~~he~~ the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within ~~45~~ 20 days of the mailing of ~~his~~ the mediator's report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Section 22. Section 39-71-2905, MCA, is amended to read:

"**39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers'

compensation judge against an insurer for disputes arising under chapter 71."

Section 23. Section 39-72-601, MCA, is amended to read:

"**39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the presiding officer."

Section 24. Section 39-72-602, MCA, is amended to read:

"**39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the department. ~~When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~ may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the claimant's attending physician. The reports from the two examining physicians must be sent by the

department to the presiding officer of the panel. The ~~three panel members~~ presiding officer shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) (i) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician.

(ii) If a second examination is requested, the department shall issue its order based on the report of the ~~three members of the medical panel~~ presiding officer.

~~(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ presiding officer has examined the claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third member~~ presiding officer."

Section 25. Section 39-72-612, MCA, is amended to read:

"**39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the department has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation judge, the appealing party shall request a hearing before the department. The department shall grant a hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final determination may not be issued until after the hearing.

(2) Appeals from a final determination of the department must be made to the workers' compensation judge within 30 days after the department has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the department only on the basis that the department's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

NEW SECTION. **Section 26. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 28. Applicability.** (1) [Section 10] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

(2) [Section 18] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning after October 1, 1973.

(3) [Sections 5 and 25] apply to hearings or appeals requested on or after [the effective date of this act].

NEW SECTION. **Section 29. Effective dates.** (1) [Sections 5, 13, 22, and 25 through 28 and this section] are effective on passage and approval.

(2) [Sections 1 through 4, 6 through 12, 14 through 21, 23, and 24] are effective October 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0200, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the workers' compensation act and the occupational disease act; adding definitions; exempting corporate officers and managers of limited liability companies from coverage unless the employer elects to cover the officer or manager and the insurer allows the election; clarifying prohibitions regarding medical provider self-referral; authorizing the Department of Labor and Industry to conduct hearings and appeals by telephone or video conference; clarifying the status of limited liability companies; clarifying the liability of an employer who contracts work out; clarifying the department's responsibility in approving the group purchase of workers' compensation insurance; requiring the investment income of the uninsured employers' fund to be deposited in the fund; removing the limit on an uninsured employer's liability for claims; increasing the authority to file cease and desist orders to include persons, businesses, and entities that have contracted with uninsured employers and providing for penalties; providing a district court with the option to request the workers' compensation judge to determine the amount of recoverable damages due to an injured uninsured worker; removing the references to wage supplement; requiring the board of investments to invest certain money in the subsequent injury fund and requiring the investment income to be deposited in the fund; reducing the time period allowed for a party to respond to a workers' compensation mediator's recommendation; revising the medical panel process.

ASSUMPTIONS:
State Compensation Insurance Fund (State Fund):
1. "Aid or sustenance" is not considered wages.
2. Quasi-public, private corporations and manager-managed limited liability companies must elect coverage for corporate officers or managers, at a minimum election of $200.00 per week.
3. The State Fund can not determine the number of quasi-public, private corporations and manager-managed limited liability companies that would elect coverage.
4. Currently, quasi-public, private corporations and manager-managed limited liability companies must reject coverage for corporate officers or managers.
5. Coverage would extend to the subcontractor of an independent contractor or to subcontractors of subcontractors.
6. The department may issue an order to a prime contractor to cease all operations if a direct subcontractor with whom the prime contracted is uninsured. The department does not have the same authority with regard to subcontractors of subcontractors. The incentive for insuring coverage compliance is lost beyond the immediate subcontractor of a prime contractor. This exposes the State Fund to additional liability under 39-71-405.
7. Since the actual number of quasi-public, private corporations and manager-managed limited liability companies insured by the State Fund is unknown, it has been assumed that 1/2 of the State Fund policyholders are one of these types of entities.
8. The State Fund will be required to modify its computer system at an estimated cost of $35,700.

(Continued)

Dave Lewis 1-22-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

ELLEN BERGMAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0200, as introduced

HB 200

9. State Fund will be required to redesign and purchase many internal/external policy forms at an estimated cost of $27,260. This does not include labor cost.
10. The total fiscal impact of this bill to revenues and benefit payments can not be determined.

Montana Board of Investments:

11. This act requires that the Montana Board of Investments invest the "uninsured employees" fund and the "subsequent injury" fund and deposit the investment earnings in the respective accounts in accordance with current practice. Therefore, there is no fiscal impact.

Department of Labor and Industry:

12. There is no fiscal impact with the passage of this legislation.
13. Presently, the department conducts telephone hearings; however, a recent Supreme Court decision may change that practice. Failure to enact the legislation authorizing telephone hearings could result in increased expenditures for reimbursement of hearings officers travel expenses and automation costs.
14. If in-person hearings are necessary, an additional 0.59 FTE hearings officer would be required and the total cost to the program would be $69,301 in FY96 and $50,861 in FY97.

FISCAL IMPACT:

State Fund

	FY96	FY97
Expenditures:	Difference	Difference
Operating Expenses	62,960	10,000
Funding:		
Insurance Fund (06)	62,960	10,000

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 19, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 211, HB 243, HB 200, HB 216,
Executive Action: SB 100, HB 66, HB 68, HB 148, HB 216, HB 211, HB 243

EXECUTIVE ACTION ON SB 100

Motion: **REP. PAVLOVICH MOVED SB 100 BE CONCURRED IN.**

Vote: **Motion passed 18-0.**

consistency so that the boards are doing uniform things and there are not numerous bills depending upon the occupation involved. **Carol Grell, Legal Counsel, State Electrical Board** said the one year lapse is consistent with the other boards. In the original draft of the language it was actually based upon the pharmacy language. There is a model act being circulated in an effort to be consistent with all the boards.

REP. BARNETT questioned the title. **Ms. Grell** said the title would also include the amendment.

CHAIRMAN SIMON asked if it were unlawful for someone to practice electrical work in the state without a license. Also, he asked if a license were granted to anyone who refuses to pay or fails to pay the fees. **Ms. Grell** said a person cannot work without a license and since this is a nonrenewal situation. They have forfeited their license. **CHAIRMAN SIMON** said amendment 1 seems to be self evident. If fees are not paid there is no license and if the person does not have a license the person cannot practice. **Ms. Grell** said there were a lot of situations that arise. The people fail to renew for whatever reason and they are within the one year grace period and the question always arises as to what they are supposed to be doing. During the one year, the license is not gone it is in a lapsed status. A lapsed license is not something that allows an electrician to work.

CHAIRMAN SIMON said if there was that type of contact with someone and they paid their fees then they would be licensed. He said he did not see how this language changes anything. If they refused to pay their license then the license is not there. **Ms. Grell** said she agreed. The amendment is an effort to make that clear to the licensees as well as the attorneys who appear to challenge the board.

Closing by Sponsor:

Sponsor closes.

HEARING ON HB 200

Opening Statement by Sponsor:

REP. ELLEN BERGMAN, HD 4, Custer County said this bill was an act generally revising the Workers' Compensation Act and the Occupation Disease Act of Montana; which added definition; exempted corporate officers and managers of limited liability companies from coverage unless the employer elects to cover the officer or manager and the insurer allows the election; it clarifies prohibitions regarding medical provider self referral; it authorizes the Department of Labor and Industry to conduct hearings and appeals by telephone or video conference; it clarifies the status of limited liability companies; it clarifies the liability of an employer who contracts work out; it clarifies

the department's responsibility in approving the group purchase of WC insurance; it requires the investment income of the uninsured employers' fund to be deposited in the fund; it removes the limit on an uninsured employer's liability for claims; it increases the authority to file cease and exist orders to include persons, businesses, and entities that have contracted with uninsured employers and providing for penalties; it provides a district court with he option to request the WC judge to determine the amount of recoverable damages due to an injured uninsured worker; it removes the references to wage supplement; it required the Board of Investments to invest certain money in the subsequent injury fund and requires the investment income to be deposited int he fund and it reduces the time period allowed for a party to respond to a WC mediator's recommendation.

Proponents' Testimony:

Chuck Hunter, Department of Labor and Industry said most of the things in the bill are on a regulatory role. There are comments from insurers, claimants, employers, medical providers about the problems in the existing law. He then gave a section synopsis regarding the changes in the legislation. **EXHIBIT 5**

George Wood, Montana Self Insurers Association said they supported the bill.

Jacqueline Lenmark, American Insurance Association supports this bill.

Chris Racicot, Executive Director, Montana Building Industry Association said he supported this bill with the amendments plus some amendments pending.

Carl Schweitzer, Montana Contractors Association said he supports the bill. One concern, however, is there are many contractors who in turn have sub-contractors and they may hire sub-contractors on a daily basis. Many times the general contractor does not know that the subs have the proper Workers' Compensation insurance.

Lawrence Hubbard, State Compensation Insurance Fund said there was a reservation regarding Section 405. The liability incurred is for the immediate sub-contractor.

Don Allen, Coalition for Workers' Compensation Improvement said he was in support of the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIS questioned the liability to the prime contractor. He questioned the testimony relating to the fact that all of the subs that are responsible to the contractor are covered. These sub-contractors in turn must cover their sub-contractors. **Mr. Hunter** said this was correct. **REP. ELLIS** then questioned Section 11. **Mr. Hunter** said it was only the uninsured employers who would pay the benefits. **REP. ELLIS** then questioned a company that was liable. **Mr. Hunter** said if there were coverage there it would be the insurance company who would be paying the full amount of that claim.

TAPE 1, SIDE B

REP. COCCHIARELLA said in her employment position she discovered after a stream of young men come to request independent contractor exemptions they were working for a sub-contractor. The prime contractor had proof that the sub-contractors had Workers' Compensation but the sub had sent these people to get exemptions. He was not taking on any insurance for any employees. He covered himself as the sole proprietor in a partnership. He had Workers' Compensation but all the people working for him were uncovered. She asked what happened under this new law if someone was hurt. How would the insurance company know about that? **Mr. Hubbard** said if the second tier of these employees are involved, and they are true contractors, then the sub-contractor would have the responsibility under Section 405 to insure they had Workers' Compensation coverage. In that sense if they are true independent contractors this law would have an effect in essence to require that sub-contractor to require of his sub-contractor coverage of Workers' Compensation.

Closing by Sponsor:

Sponsor closes.

HEARING ON HB 216

Opening Statement by Sponsor:

REP. VICKI COCCHIARELLA, HD 64, Missoula County said this bill was an act exempting employment of an employer's spouse for whom an exemption based on marital status may be claimed under federal tax law from coverage under the Workers' Compensation Act unless coverage is elected.

Proponents' Testimony:

Mr. Hubbard said the State Fund supports this bill.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 1-19-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chair, Maj.	X		
Rep. Bob Pavlovich, Vice Chair, Min.	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

EXHIBIT 5
DATE 1-19-95
HB 200

WC HOUSEKEEPING BILL
SECTION SYNOPSIS

Section 1: Definitions

Section 2: Revises the definition of "employer" to include limited liability companies, a new business entity authorized by the 1993 Legislature.

Section 3: Adds persons who are managers in manager-managed limited liability companies and corporate officers of quasi-public and private corporations as employers who may elect to include themselves as employees within the provisions of the Workers' Compensation Act.

Section 4: Excludes medical providers who have an ownership interests in managed care organizations from the prohibition of referring injured workers for treatment or diagnosis at a facility wholly or partly owned by the medical provider.

Section 5: Permits workers' compensation contested case hearings to be conducted by telephone or videoconference.

Section 6: Exempts working members of member-managed limited liability companies, managers in manager-managed limited liability companies, and officers in quasi-public and private corporations from the provisions of the Workers' Compensation Act.

Section 7: Imposes liability for injuries of workers employed by an uninsured subcontractor on the first insured contractor or subcontractor. There is an increasingly common situation of the creation of a chain or a "totem pole" where a principal contractor will contact with a subcontractor who also subcontracts with a another subcontractor, etc. resulting in multiple subcontractors.

Section 8: Definitions

Section 9; Clarifies that a group certified under this section may add new members without the approval of the department.

Section 10: Codifies the long standing practice of utilizing the board of investments to invest the money of the Uninsured Employer Fund. The proposed language will also clarify that the investment income from the fund must be deposited in the fund and cannot be utilized for other purposes.

Section 11: Removes the $50,000 limitation on employer liability under this section.

Section 12: Authorizes the department to issue cease and desist orders to prime contractors who utilize uninsured subcontractors.

Section 13: Authorizes district court judges to request the Workers' compensation court judge to determine the amount of recoverable damages due an employee.

Section 14: Removes the reference to "wage supplement" since those benefits were eliminated during the last legislature.

Section 15: Adjusts cited reference numbers/letters to align them with changes made in Section 39-71-116.

Section 16: Adjusts cited reference numbers/letters to align them with changes made in Section 39-71-116.

Section 17: Removes the reference to "wage supplement" since those benefits were eliminated during the last legislature.

Section 18: Codifies the long standing practice of utilizing the board of investments to invest the money of the Subsequent Injury Fund. The proposed language will also clarify that the investment income from the fund must be deposited in the fund and cannot be utilized for other purposes.

Section 19: Excludes treating physicians who have ownership interests in managed care organizations from the prohibition of referring injured workers for treatment or diagnosis at a facility wholly or partly owned by the treating physician.

Section 20: Includes limited liability companies with other types of business entities referenced in this section.

Section 21: Shortens, from 45 days to 20 days, the time allowed for a party to respond to the recommendation made by a Workers' Compensation Mediator.

Section 22: Authorizes district court judges to request the workers' compensation court judge to determine the amount of recoverable damages due an employee.

Section 23: Language made gender neutral; clarifies selection of the Occupational Disease Panel Chair.

EXHIBIT 5
DATE 1-19-95
HB 200

Section 24: Language made gender neutral; clarifies examination and reporting process of physicians on Occupational Disease Panel to reflect fluid makeup of the Panel.

Section 25: Permits workers' compensation contested case hearings to be conducted by telephone or videoconference.

Section 26: Saving clause

Section 27: Severability

Section 28: Applicability

Section 29: Effective dates

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor SUB-COMMITTEE DATE 1/19/95

BILL NO. HB200 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
George Wood	MT Self Insurers Assn	✓	
Carl Schweitzer	MT Const Assn	✓	
Jacqueline Lenmark	Am. Ins. Assoc.	✓	
CHUCK HUNTER	D.O.L.I	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 24, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 255, HB 252, HB 264, SB 33,
Executive Action: HB 255, HB 203, SB 21, SB 33, HB 200, HB 252, HB 223

HEARING ON HB 255

Opening Statement by Sponsor:

REP. JOE QUILICI, HD 36, Silver Bow County said this bill was an act prohibiting the Public Service Commission from requiring or

Discussion:

REP. ELLIS said George Woods had conversed with him and said he was opposed to this change. The change is being proposed because it did not get into the bill during the last session. He thinks "shall" is more appropriate.

CHAIRMAN SIMON said for those of the committee that were not here during the last session, there was a special bill that went through committee dealing with the Yew-Bark peelers. They were being classified as loggers. There was a special classification set up which would not be allowed and would be going back to being called loggers. They would be required to use the classification from NCCI.

REP. SLITER asked if there were any other classification changes because the Yew-Bark industry is no longer in operation.

REP. COCCHIARELLA said there are other classifications that have been established for the state. There are Christmas tree growers as one. They go through a process where they eventually are adopted by NCCI and put on the classification listing. The issue here is how the established rates are comprised. That is the flexibility which was asked for. We passed this bill last session and this bill simply corrects the law.

REP. EWER said Workers' Compensation has three categories of insurers: self employed, class 2 and State Fund. The State Fund has no choice but to underwrite. They are the insurer of last resort. They need some flexibility.

Vote: **Motion carried on SB 21 BE CONCURRED IN by 17-1 with REP. ELLIS voting no. REP. ELLINGSON was requested to carry this bill on the House floor.**

EXECUTIVE ACTION ON SB 33

Motion/Vote: **REP SLITER MOVED SB 33 BE CONCURRED IN. Motion carried on SB 33 by 18-0. REP. EWER was requested to carry this bill on the floor.**

EXECUTIVE ACTION ON HB 200

Motion: **REP. MCKEE MOVED DO PASS ON HB 200. REP. MCKEE MOVED THE BERGMAN AMENDMENT.**

Discussion:

Mr. Chuck Hunter, without objection from committee, said the amendment puts into compromise the Department of Labor and how they can handle situations where the insured sub-contractor was working on a job. They have 72 hours to be insured. If the

situation is not taken care of in 72 hours, the prime contractor must cease all operation.

REP. MILLS asked if the 72 hours was stated in the amendment.

Mr. Hunter said it occurs in the term "after three business days" and is the way it appears.

Vote: A vote was taken on the adoption of the Bergman amendment. Motion carried 18-0.

Motion: REP. KEENAN MOVED THE RACICOT AMENDMENT.

Discussion:

REP. KEENAN then explained this amendment would strike section 7 which would protect the general contractor or owner or consumer if there is an employee.

Chris Racicot said this amendment strikes section 7 and renumbers the subsequent sections. There is no language in that section that pertains to any of the sections. That section would do a number of things if it is passed into law. It is based upon a court decision which occurred recently. A contractors liability for an uninsured employee or an uninsured independent contractor which was injured could only go up one level. That was the court decision. What the Department of Labor would like to do is circumvent that and go up another level to an insured party. The Department of Labor and the state would have coverage. When a general contractor hires a sub he checks for Workers' Compensation coverage or an independent contractor exemption. If he has one of those, that general contractor is covered. That sub-contractor then not known to the general contractor, could bring on an employee. If that employee is uninsured and gets hurt, the liability goes up to the sub-contractor. If he does not have Worker's Compensation coverage for this incident, the general contractor is responsible. It promotes irresponsibility on the mid level sub-contractor. He knows he is not going to be responsible for this injury. He has no incentive to cover that employee. It also brings unknown liability to the general contractor because he does not know if he has made certain the sub-contractor, which he has hired, has current Workers' Compensation coverage.

Chuck Hunter said he does not concur on the amendment. The situation is when there is an independent contractor with another independent contract both uninsured or a general contractor and sub-contractor both uninsured; if there are two level uninsured, currently under the court decision in the Workers' Compensation Division, the state will be responsible for those costs. That would rise up in that chain of two uninsured to the level of the general. It is a matter of public policy whether the committee wants to see the state pick up the tab for that or whether the committee wants to see this cost goes to the insurer.

REP. COCCHIARELLA was opposed to the striking of section 7. The law would not be in place now. The new language in section 7 may be omitted but not the original language.

Steven Maly said striking the section of the bill would, in effect, leave the law as it reads today. The code remains the same. It is the bill that is changed and not the law.

REP. EWER said he had reservations about the amendment. The new wording in the bill will be omitted. Very few houses are built by the prime contractor anymore. The department has had many problems seeing that people are insured.

REP. DEVANEY said he opposes the amendment. He then requested a clarification of the independent contractors status.

Mr. Hunter said an independent contractor must be independently engaged in his own trade occupation or profession or business and be free from control or direction. If that definition is met the contractor could subsequently apply to the department for an exemption from Workers' Compensation.

REP. ELLIS said he agrees with **Mr. Racicot** in that sub-contractors were allowed to be irresponsible in their hiring practices. If the state does not want to be responsible in this case, somebody is being placed in responsibility without having to give notice. It is perfectly justified that they do not want that responsibility.

REP. SLITER stated there are people who act as their own general contractor. For them to become liable for one of their sub-contracted employees is not right.

REP. TUSS said when a hospital sub-contracts there are certain requirements which are reviewed by the hospital. Some of these items are safety, training, insurance. That is the responsibility of the hospital and the protection for the hospital. If one of the sub-contractors hires a second sub-contractor, just because of the hospital's interest, he is not acting responsibly.

REP. MILLS said he agreed with **REP. ELLIS**.

REP. COCCHIARELLA said the committee needs to know. If the self insurers make sure the sub-contractors have coverage all is well. If it is determined that someone has coverage to protect themselves, it is required that the sub-contractor provide to them a certification of insurance which comes from the State Fund or from their insurer.

CHAIRMAN SIMON said as he viewed this situation it is to create a situation where greater responsibility is placed upon the prime contractor to make sure all of the people that are sub-contracted actually have Workers' Compensation coverage. If that is

accomplished, then he is safe at having this chain come back up through him if the sub-contractors hire another sub-contractor below him. But, if he does not act diligently and hires a sub-contractor who is not covered by Workers' Compensation, then he does have the possibility of having it come on through the chain. The prime contractor can protect himself by insuring that every sub-contractor that he hires does have appropriate coverage.

That protects that prime contractor. He said he did not concur with **Mr. Racicot's** amendment.

Vote: Motion to adopt the Racicot amendment failed 15-3 with REPS. SLITER, MARSHALL and MILLS voting yes.

CHAIRMAN SIMON requested the chair be relinquished to **REP. MILLS.**

Motion: REP. SIMON MOVED THE SIMON AMENDMENT.

Discussion:

REP. SIMON said the words fiscal creates some confusion and the actual year is referred to and not the fiscal year which appears on line 6 and 7.

Vote: Motion to adopt the Simon amendment carrieD 18-0.

REP. MILLS relinquished the chair back to **REP. SIMON.**

MOTION/VOTE: REP. MCKEE MOVED HB 200 DO PASS AS AMENDED. Motion carried 18-0.

EXECUTIVE ACTION ON HB 252

Motion: REP. VICKI COCCHIARELLA MOVED DO PASS.

Discussion:

REP. HERRON asked about rulemaking in the language on line 17.

REP. MILLS said the committee had gone a long way to adding responsibility on top of responsibility. "Why not put the responsibility to the professionals who are licensed by the state to do those job?"

REP. TUSS said she supports the bill. When it was discussed on joint commission, that is the premier regulatory accrediting body for all health care institutions. Recently, that body has mandated review that is both qualitative and quantitative for medical gasses. Part of the reason that that mandate came through is embodied in the area of cross connections and various kinds of contamination. When an architect comes in, everything should be fine.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 1-24-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chair, Maj.	X		
Rep. Bob Pavlovich, Vice Chair, Min.	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE STANDING COMMITTEE REPORT

January 24, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 200** (first reading copy -- white) **do pass as amended.**

Signed: _____
Bruce Simon, Chair

And, that such amendments read:

1. Page 18, line 11.
Strike: "cease"
Insert: "cause"
Following: "operations"
Insert: "performed by the uninsured employer to cease at worksites controlled by the prime contractor"

2. Page 18, line 12.
Following: "plan."
Insert: "If after 3 business days following the order by the department the person, business, or other entity functioning as a prime contractor has not complied with the order, the department may order the prime contractor to cease all operations at the affected worksites."

3. Page 22, lines 6 and 7.
Strike: "fiscal"

4. Page 22, line 28.
Following: "~~45~~"
Strike: "20"
Insert: "25"

Committee Vote:
Yes 18, No 0.

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RPT. LCB4 FINAL COMMITTEE REPORT OF REFERRED BILLS RUN TIME 10:02
RUN DATE.... 04/06/95

SENATE LABOR & EMPLOYMENT RELATIONS

CHAIRMAN--TOM KEATING
SECRETARY-MARY FLORENCE ERVING
NORMAL SCHEDULE => SITE: ROOM 413/415 DAYS: T,TH,S TIME: 3 P.M. OR ON ADJOURN

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0031	EWER, DAVID 1/10	1/17	1/19	EXEMPT MINOR AGE OFFICIAL FOR NONPROFIT GROUP FROM CHILD LABOR STANDARDS ACT CONCUR AS AMENDED 1/24 VOTE: 9-0		1/25
HB0047	LARSON, DON 1/11	1/17		GENERAL REVISE BOARD OF PERSONNEL APPEALS; REPEAL RESTAURANT WAGE PROTECTION CONCUR AS AMENDED 1/19 VOTE: 9-0		1/20
HB0066	WISEMAN, WILLIAM 1/26	2/28		TRANSFER BOILER, CRANE, BLASTER LICENSING TO DEPT OF COMMERCE TABLED ON 03/15 VOTE: 9-0		
HB0068	SCHWINDEN, DORE 1/26	2/28		GENERALLY REVISE INDUSTRIAL SAFETY LAWS CONCUR AS AMENDED 3/14 VOTE: 9-0		3/16
HB0098	PAVLOVICH, BOB 1/18	1/31		EXEMPT DIRECT SELLERS FROM OVERTIME, MINIMUM WAGE, WORKERS' COMP AND UI CONCUR 1/31 VOTE: 8-1		2/01
HB0100	MCKEE, JEANETTE 2/21	3/07		REVISE CERTAIN UNEMPLOYMENT INSURANCE LAWS CONCUR 3/7 VOTE: 8-1		3/09
HB0114	AHNER, CHRIS 1/17	2/02		CLARIFY NATIONAL GUARD LEAVE OF ABSENCE FOR STATE DUTY CONCUR 2/9 VOTE: 9-0		2/09
HB0152	COCCHIARELLA, VICKI 1/25	2/14		AUTHORIZE REDUCTION IN SECURITY DEPOSIT FOR SELF-INSURERS CONCUR 2/14 VOTE: 9-0		2/27
HB0168	ORR, SCOTT 2/06	2/28		REVISE WORK COMP RATES AND BENEFITS FOR VOLUNTEER FIREFIGHTERS CONCUR 2/28 VOTE: 9-0		3/02
HB0200	BERGMAN, ELLEN 2/02	3/07		GENERALLY REVISE WORKERS' COMPENSATION ACT CONCUR AS AMENDED 3/9 VOTE: 9-0		3/11
HB0216	COCCHIARELLA, VICKI 1/24	2/14		CLARIFY STATUS OF SPOUSE UNDER WORKERS' COMPENSATION CONCUR 2/14 VOTE: 9-0		2/27

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 7, 1995, at 3:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 100	HB 200
Executive Action:	HB 100	BE CONCURRED IN

HEARING ON HB 100

Opening Statement by Sponsor:

REPRESENTATIVE JEANETTE MCKEE, HD 60, Hamilton and Corvallis, stated HB 100 is referred to as the Unemployment Insurance housekeeping bill because it contains a variety of statute changes. The changes are needed. The first change is to conform state law to meet the requirements in federal law. The second is to clarify, in statute, the issues that have been or have the potential of being disputed in appeals and other legal actions. The third is to enable or to reinforce the state's ability to perform required functions in the most efficient and economical manner. The bill addresses nine general areas. Three areas address conformity issues, which are critical in the sanctions

office every week to seek employment? **Mr. Sager** said they have to go back every week to seek employment. The profiling system requires a particular program be set up to identify the likelihood of an individual exhausting benefits. In other words, the individual is entitled to draw for 26 weeks. Instead of putting the person on; having the person come in every couple of weeks to verify looking for work, but not finding work, the system has been changed. There are problems for such individuals working in the logging business that shuts down. These people are living in the area, but there is no logging business available. The problem is waiting for the 26 weeks to be up. Then the logging people are told they have to find some other source of income. They have no other skills, but probably exhausted the job possibilities early on, two, three, or four weeks into the process. The difficult factors could be solved by bringing the person in for a list of employment services, based on their particular needs. Find out what the person is interested in, maybe a change in occupational areas would solve the problem. The person needs education, assistance, etc. so they can become reemployed, without losing benefits. The program is a federal requirement, passed in November, 1993. All states are required to implement the program. Montana will implement the program in the Fall, 1995.

Closing by Sponsor:

REPRESENTATIVE JEANETTE MCKEE stated the changes are important changes to enhance the Montana Unemployment Insurance Program. There would be no cost for administering the program, resulting from the provisions. The Unemployment Trust Fund is not negatively effected. The legislation gives the Montana program, and **Mr. Sager** the ability to enhance the mandated duties and do a better job. In response to **SENATOR BENEDICT's** comment about pending amendments she stated she would not be terribly disappointed if the bill does not return to the House for debate. **REPRESENTATIVE MCKEE** urged the committee to vote yes.

HEARING ON HOUSE BILL 200

Opening Statement by Sponsor:

REPRESENTATIVE ELLEN BERGMAN, HD 4, Miles City, stated HB 200 is an act generally revising the Workers' Compensation Act. The bill was introduced at the request of the Department of Labor and Industry and is part of the administrative package. The bill is lengthy. Most of the provisions are true housekeeping measures. There are several more substantive sections dealing with contracting relationships under Workers' Compensation, which the Department will explain in detail. The Department has been working with effected parties for a number of months. There is substantial consensus on HB 200. There has been some amendments

attached in the House, and the amendments are non-controversial. **(EXHIBIT 2)**

Proponents:

Chuck Hunter, Department of Labor and Industry, stated the synopsis information (**EXHIBIT 3**) is true housekeeping information. In the Department of Labor's Workers' Compensation regulatory role, the Department works with clients, employers, injured workers, and provider insurers. Often times the clients come to the Department with proposals for minor changes, which need to be based in law. We have achieved minor corrections.

Section 6, 7, 11, and 12 deal with important issues. Section 6 in the current form, before the amendments, adds clarification about the limited liability companies that have been addressed by HB 100. Worker's Compensation System, like the UI System, have updated provisions that deal with limited liability companies. The limited liability companies were identified during the 1993 Session. The amendment deals with the independent contractor process and is designed to dovetail the provisions of **SENATOR FORRESTER'S** Bill about contractor registration. Under this amendment, the Independent Contractor Exemption Process would become an annual process, rather than the current lifetime process. Now, an Independent Contractor comes to the Department and gets the exemption. The exemption stays in effect forever, or until the independent contractor lets the Department know the status has changed. The process would make the independent contractor come in on an annual basis, give an updated status, give more verification that they are truly a operating independent contractor. It would also implement a $25 application fee for the exemption. The changes bring several benefits. There is regular, updated information about who is operating as an independent contractor. The fee would have the effect of encouraging those who are operating as independent contractors to come get the exemption. It would weed out the folks that are not truly independent contractors. The legislation will place the cost of administering the program on the IC, as opposed to issuers and employers who currently pick up the tab.

Section 7 deals with the liability of prime contractors for benefit claims that arise from an uninsured subcontractor the prime contractor hires. Under current law, when there is an uninsured subcontractor and an injured worker working for the uninsured subcontractor, the benefit costs can be transferred from the uninsured sub to the prime contractor. A recent Workers' Compensation Court decision altered that is some respect. The prior practice was no matter how many unemployed subcontractors there were in the "totem pole chain", the Department would find where there was coverage, starting at the bottom and going up. The Workers' Comp. Court decision said the Department can only go up one level. In the original HB 200 proposal, the Department would go to the last past practice. The

idea was somewhat controversial. Insurers and employers alike felt like they were exposed to liability they could not address or even know about upfront. On the House Floor, a complicated, bureaucratic amendment was discussed. The language said, "provided contractors, to some degree of protection, if they went through the tiered process of verifying and getting certification about the IC and subs." The Senate proposal takes Section 7 out of the bill entirely and gets rid of the controversy. The wanted liability protection concern is corrected with amendments to **SENATOR FORRESTER'S** Bill. There is consensus to get the language back into the bill, so the protection is restored.

Section 11 deals with the current cap of liability on the Uninsured Employer's Fund, UEF. Currently, the UEF has two functions, to bring uninsured employers back into compliance and to pay benefits to workers who are working for an employer who does not have insurance coverage. THE UEF acts like a mini insurance company that picks up the benefits. People can recover from employers. Available benefit monies come from the fund and are capped at $50K. The amount puts the Department into some financial pain because many times the problems prove to be more costly than $50K. Current Department claims are in excess of $100K, some in excess of $200K. The Department proposes to remove the cap which would allow the Department to go back to the uninsured employer and recover, dollar for dollar, the paid out benefit costs.

Section 12 would allow the Department to provide notice to prime contractors, when it is discovered that there is an uninsured sub working the job. The Department would require the prime insurer to make sure the uninsured sub had proper Worker's Compensation coverage. The alternative would be to get the uninsured sub off the job. The Department would notify the prime, give the prime three days to allow the uninsured sub to comply or get off the job. If nothing happens within three days, the Department could go to the prime and shut down the work site until compliance was reached. The language was developed in conjunction with the Montana Contractor's Association. Proposals were studied, and the new language was written.

George Wood, Executive Secretary, Montana Self Insurers Association, expressed support of HB 200. The amendment to strike section 7 is unintelligent and impractical. By striking and adding the information to section 6, and making the final change on notification of prime contractors, a good change occurred in the bill. The Department has been very fair about the legislation. The Association worked closely for about a half year with **Mr. Hunter** and their suggestions were treated fairly. The Association urged approval of HB 200, with the amendment.

Steve Shapiro, Montana Nurses Association, read his written testimony, offered an amendment, and submitted a letter from an Advanced Practice RN. **(EXHIBIT 4)**

Jacqueline Lenmark, representing the American Insurance Association, stated AIA thanks the Department of Labor for allowing participation in the drafting of HB 200. Association members believe the bill to be a "good bill" and support the amendment presented by **Mr. Hunter**. AIA would strongly resist the **Shapiro** Amendments to included advanced practice nurses in the definition of "treating physician". AIA participated at every stage of the amendments presented and enacted for Workers' Compensation Act in the 1993 session. The omission of advanced practice nurses was not inadvertent. The Association resists the inclusion of advanced practice nurses.

Nancy Butler, Chief Legal Counsel, State Fund, stated the advanced practice nurses were not inadvertently overlooked in the last session. Physician assistants were added to the list of treating physicians in areas where there are no physicians treating. There is a distinction between the two. PAs are supervised by a physician, where an advanced practice nurse does not necessarily have a supervising physician. This is important because the treating physician list is meant to be the "gate keeper". There is an advanced practice RN with a wide scope of practice, who can coordinate care. It is important the person is seen by a doctor, and the doctor sends them down the right path. The legislation is not intended to include all other types of medical personnel who are treating injured workers. They are still very much a part of the team effort. The PAs are not on the "gate keeper" list. They are at a treating level. Also, an advanced practice RN in a rural area can still see an injured worker for treatment, if the patients are just injured. The State Fund does not get involved in dealing with the fact they are seeing a treating physician on the list, until after the State Fund is aware of the claimant. The immediate care can still be given and paid for. Once the worker sees a treating physician, the care can be delegated to the advanced practice nurse in that area.

Don Allen, Coalition of Workers' Compensation System Improvement, stated support of HB 200. The Coalition agrees with the proposed amendments to clarify parts of the bill. The Coalition has concern over how to deal with the independent contractor issue, particularly in the construction industry. House Bill 200 is a step in the right direction, as is some of the content in **SENATOR FORRESTER'S** Bill.

Russ Cater, Chief Legal Council, Department of Social and Rehabilitative Services. The Department requests the Committee adopt an amendment **(EXHIBIT 5).** The amendment is the means of assisting the Department of SRS to implement the development of the Workers' Compensation components of the Welfare Reform Proposal. Currently, Workers' Compensation Law is unclear as to whether or not a worker's participation in the programs can be covered under Workers' Compensation Laws. Because of the great uncertainty, the Department is concerned. Some employers will be reluctant to participate in having people on welfare participate

in the program and become involved in the work. The amendment offered has the option of the employer and the employer's insurer to whether or not they want to be covered by Workers' Compensation Laws. Otherwise, they would run the risk of having workers sue them for general damages and liability for negligence.

Mr. Cater stated last week the Department met with attorneys from Worker's Compensation, **Nancy Butler** and **Minnie Hibbard**. They suggested using the language, currently used in HB 462, regarding volunteer workers. In HB 462, the employer has the option to cover the workers. The Department thought it appropriate to include the amendment for HB 200 and to include AFDC recipients, rather than HB 462 because HB 462 has already been heard in committee. The amendment is the means of assisting the Department of SRS in implementing the development of the Welfare Reform Proposal. Currently, Workers' Compensation Law is unclear as to whether or not a worker, participating in the program can be covered under the Worker' Compensation Law. Because of the uncertainly, the Department is concerned that some employers will be reluctant to participate and have people on welfare work in their businesses. The amendment offered has management option to participate or not participate.

<u>Questions from the Committee Members and Responses:</u>

SENATOR BENEDICT asked **Mr. Hunter** how much the $25 would raise. **Mr. Hunter** replied the amount would be between $35K to $40K annually. **SENATOR BENEDICT** asked if the amount would be in addition to **SENATOR FORRESTER'S**, SB 354's $70 contract/registration fee. **Mr. Hunter** replied that the amount would be in addition to the fee for those who are in the construction field. Although, if the applications are obtained together, the construction contractor, who is also the independent contractor, would only have to pay one fee. Since the paper work is about the same, the department would do the work for the $70.

SENATOR BENEDICT asked **Mr. Shapiro** how many bills he had tried to amend with the advanced nurse language. **Mr. Shapiro** stated he has tried to amend the definition of the treating physician into two bills, SB 375 and HB 200. **SENATOR BENEDICT** asked **Mr. Shapiro** what the reaction was when he tried to amend SB 375. **Mr. Shapiro** stated SB 375 was considered. Suggestions were made that the amendment be coordinated with the State Fund. He tried to talk to **Mr. Swanson** and has not been successful. **SENATOR BENEDICT** stated he understood executive action was taken on SB 375, and the provision was rejected.

SENATOR EMERSON stated his wife is a registered nurse. In the days she was going to school, there were registered and practical nurses. Shortly after, training took place on a college level in the university system. **SENATOR EMERSON** asked exactly what is a Advanced Practice Registered Nurse. **Mr. Shapiro** replied that the

advanced practice registered nurse goes back to college, after receiving the RN license, for a masters degree and takes a specialized national examination. These RNs are certified for a higher level of nursing practice. **CHAIRMAN KEATING** asked if the RNs go through medical school and are allowed by the Board of Medical Examiners to be diagnostic-type physicians. **Mr. Shapiro** stated the advanced practice nurse does not go to medical school, but rather goes to a School of Nursing were they receive the upper level education in the nursing field. The amendment gives information about the nursing process. **Mr. Shapiro** stated he could not say the nurses are practicing medicine, since practicing medicine has its own definitions. There are similarities in being able to see a patient, evaluate the patient's needs and begin treatment, with follow through.

SENATOR BARTLETT asked Nancy Butler about prior testimony concerning specialized physician assistant being included in the list, when there is not a physician in the area where the PA is located. What would your response be if the Committee names either an advanced practice registered nurse or a physician assistant who are in areas where physicians are not available. **Ms. Butler** stated it is one of those hard decisions because one can understand the problem of a worker being in an area without a physician where there may be a advanced practice nurse in that area. The State Fund's concern is the gatekeeper concept, where the doctor is up front, dealing with the problems and coordinating care with the other providers. Nurses may or may not have a standard supervisory position. The PA's are supervised by a medical doctor. Patients will have the initial care, then see the nurses. Workers' Compensation pays the bills. **Ms. Butler** stated she did not know how big the problem was. **SENATOR BARTLETT** said not all PAs in the state could qualify as a treating physician, by definition. It is only those who are working in areas where there is not a physician available, that could be the treating physician. **Ms. Butler** replied yes. The treating physician fulfills the role of the treating physician when the PAs are treating the injured worker in a clinic. The PA is under the supervision of the treating physician.

SENATOR BARTLETT asked **Ms. Butler** to assume that there is not a physician that could qualify as a treating physician under the definitions. What role would the PA play in Workers' Compensation cases. **Ms. Butler** stated they would have the right to take the worker and treat through the full course of their injury. The PA would obviously make any necessary referrals for additional treatment. A Managed Care Organization might overlap small towns, at some point. The worker may ultimately find his/herself in a Managed Care Organization (MCO). If there was not an MCO, the particular PA would be qualified to handled the not too complex patient. **Ms. Butler** stated it is not clear if the PAs could do impairment rating, which would be a limiting factor.

SENATOR AKLESTAD referred to section 28 and asked for an explanation of the retroactive definition. **Mr. Hunter** explained there are two retroactive sections that deal with funds: the Subject and Entry Fund and the Uninsured Employer Fund. The bill's provisions stipulate the interest from the funds are to be invested by the Board of Investments, and the interest stays within the funds. So, the retroactive provision applies to the two sections to continue the practice and to allow generated interest to be invested and remain in the fund. **SENATOR AKLESTAD** asked if the funds are to be generated from the date indicated in the bill until present. **Mr. Hunter** replied the funds will be from Oct. 1, 1977 until present. A case came from the Legislative Auditor's Office about funds generated as interest. The monies had been reinvested back into the fund, but there was no specific statutory language dealing with interest provisions. The Legislative Auditor suggested taking all the money, generated over the time period and putting it into the General Fund. **SENATOR AKLESTAD** stated he has never been a real advocate of additional fees, fines, or penalties. The fiscal note showed the need to raise additional funds for a computer system. Is there a time when the state agencies could try to get by with the system in place. **CHAIRMAN KEATING** clarified the question was why the Department was getting $37.5K, election of coverage for certain corporate offices. **SENATOR AKLESTAD** said if the legislature did not allow the fee and the fiscal note monies, how would the Department take care of needed computer funds. **Nancy Butler** answered the State Fund could possibly modify the computer system to deal with the extra data fields for limited liability companies. The budget uses premiums to manage any changes and operate within the cap of the legislature. It would not require an appropriation to deal with the program. The State Fund would work internally to enhance the computer system to track changes and have the appropriate data fields. **SENATOR AKLESTAD** asked if the revenues come out of the insurance and not directly from the legislature. She replied actually, it takes premium dollars. **CHAIRMAN KEATING** stated the amount would be the businesses' expense. **SENATOR AKLESTAD** asked if the $25 was not allowed. **Mr. Hunter** replied the $25 is coming in the form of an amendment.(**EXHIBIT 1A**) It is not reflected in the fiscal note. The effect will not be any net increase in revenue. The Department would collect the fees from the application from those parties who apply. The Department would not charge the same amount of money that is currently being charged to run the exemption process. It is a wash, in terms of Department of Labor dollars.

CHAIRMAN KEATING asked if the Labor Department estimates what the expense are going to be, then receives an appropriation from the legislature and then assess the amount to the Workers' Compensation Premium and the Self Insured Funds. **Mr. Hunter** replied that was correct.

SENATOR VAN VALKENBURG asked **Mr. Hunter** if he had an objection to the amendment proposed by **Mr. Cater, SRS. Mr. Hunter** said no.

SENATOR VAN VALKENBURG asked about section 5, contested case hearing to be conducted by telephone or video conferencing. Would it be the intention the hearing could be done by telephone or video without the consent of the injured worker or effected parties. **Mr. Hunter** stated the Department currently does the hearings by teleconference. The Department holds a prehearing conference where both parties are on the phone. The Department makes sure what the issues are and talks over the witness list to make sure the hearing is set up the way it is needed to be set up. Typically speaking, when people feel there is a real need for a face-to-face meeting, the parties will drive to Helena. The Department makes every accommodation. Most of the parties are satisfied with telephones because they do not have to leave their business or residence for a hearing. **SENATOR VAN VALKENBURG** asked if the Legislature could amend to provide the hearing could be conducted in that fashion, as long as all parties agree. **(EXHIBIT 6) Melanie Symons, Department of Labor and Industry**, stated the Department objects to that proposal. Often, one party might use the option against the other party. For instance, an injured worked who can't afford to have an in-person hearing, but an employer might insist on an in-person hearing. The injured worker would then be forced to spend their limited income to come to Helena for a hearing.

SENATOR VAN VALKENBURG stated the change applies not only to hearings that the Department would conduct, but would apply to hearings that the Workers' Compensation Court would conduct. The language says "a hearing under this chapter", and the Workers' Comp. Court is under the chapter. Has the Workers' Comp. Court indicated a desire to have the provision apply to the proceedings. **Mr. Hunter** stated he does not believe the Court intends to use the potential mechanism, but to continue their current side-wide hearings in the locations where the cases arise. **SENATOR VAN VALKENBURG** asked **Mr. Hunter** if he had objection to an amendment that would exempt the Workers' Comp. Court from the particular change. Mr. Hunter stated he would not but the Court may.

CHAIRMAN KEATING stated, as he understood the amendment, section 7 would be deleted from the bill, and the deletion restores current statutory language. What was the effect of the House Amendment. **Mr. Hunter** stated the issue with Section 405 was the possibility, under the draft, when there was a general contractor, who had several layers of uninsured subcontractors, should a claim arise at one of the lower levels the language would have allowed the Department to transfer the benefit claim up to where there was coverage. The general contractors believed the action exposed them to liability that they did not know about because they might hire a sub, and they would not know the sub had also hired a sub. The amendment that was added from the House Floor would have provided had a general contractor verified and gotten a legal document from the sub contractor that they are going to do all the work personally, or if they did hire an employee, they will have the proper coverage. That provided the

general with insurance that no claim could bounce up the line and bite the general contractor. The complaints from both the employers and insurer about the language was that a bureaucratic mechanism was needed. At the same time, there is **SENATOR FORRESTER'S** Bill moving through the legislative process. The Building Industry Association and **SENATOR FORRESTER** are working on an amendment and have agreed that would do the same thing in the construction field when there is the registered construction license in place. If the general contractor hires subs and verifies they have the registration, they will be protected from the claim bouncing up. The Department wants the solution simple.

CHAIRMAN KEATING asked for verification about the new program. At the end of the AFDC period, the person is supposed to go to work, if they do not find a job, they have to do community service. Community service, then, becomes voluntary under the amended language. If the employer accepts them to do the community work the employer can list them as volunteer and may or may not cover them under Workers' Compensation. **Mr. Cater** replied yes, it would allow the employer to have the option to decide whether or not the employer wants to pay the premium to cover the employee. Subsection 3 addresses that they also have to have the approval of the insurer. The largest number, the bulk of people who would be covered, would be the people who after the two year period of time would have to work in the programs or the benefits would be discontinued. Even during the course of the Welfare Reform Proposal, the Department is trying to find people work in work placement programs. So, the coverage would be for some people during the course of the welfare reform period. **CHAIRMAN KEATING** asked if they go to a permanent job, then they would have to be covered. **Mr. Worthington, State Fund,** stated if the people would have a job outside the AFDC paid the recipients benefits, the employer actually is not paying in terms of wage or benefits. If the worker finds a job, that employer would have to cover the employee. **CHAIRMAN KEATING** asked **Mr. Cater** if he was advised by the people in the Department who are the employers that would accept the workers for this kind of service. The Department would be paying for the service, but the employers would be volunteers for purposes of Workers' Compensation. What types of employment would the program offer? **Mr. Cater** replied the types could be varied, from clerical work to maintenance work. **CHAIRMAN KEATING** asked who would be the employer. **Mr. Cater** replied the employer would be the on-site business, it could be private sector or public sector.

SENATOR BARTLETT asked **Mr. Wood** about the amendment. **Mr. Wood** replied as written the language does present problems. The businesses will have volunteers, who are required to work for part of their benefits. The benefits will come from another Department, Labor and Employment Relations. It is much like the armed service volunteer program. The volunteers would be limited to AFDC. There are other welfare programs who may be required to have work activity. If the legislature expects the private insurers to hire, the Workers' Compensation should pay for the

Workers' Compensation Insurance. The rate would vary greatly, from clerical to heavy equipment construction. If the legislation passes, all the programs should be left alone to do whatever they want. If the legislature expected the self insurers to hire the workers, the legislature should send the workers with the Workers' Compensation. From the self insurers point of view, the self insurers can make the decision a lot easier than can those Plan 2 or Plan 3 groups where they are once removed, an insurer taking on a liability and not the employers. **Mr. Wood** emphasized that he had real questions concerning the extent of coverage and the effectiveness of the program if they are put into a unique class of volunteers.

CHAIRMAN KEATING stated he would open up the hearing to other interested parties. The amendment is far reaching with ramifications to both employees and employers. **CHAIRMAN KEATING** stated he would not want to have an AFDC person get injured and not be covered. At the same time, **CHAIRMAN KEATING** did not want an employer's experience rating to go up, or to have an increase mod factor happen because of an injury. Especially not happen in a situation where a beneficial happening is the intent. The legislation should be in a separate bill, but not in an amendment. **SENATOR VAN VALKENBURG** explained SRS intends to give employers some kind of assurance. If the entity decides to take on volunteers, they will be under the Workers' Compensation Law. This is the reason why they are tying to put on the amendment. Otherwise, an employer in the position of taking on volunteers and being subject to common law remedies being brought against the employer. **CHAIRMAN KEATING** again stated concern over who will pay the premium. **SENATOR VAN VALKENBURG** stated the employer is going to pay the premium. **CHAIRMAN KEATING** asked for comments from interested parties.

Nancy Butler, State Fund, gave background information to clarify the legislation. The State Fund heard about the bill early in the session and understood the section could be an issue for Workers' Compensation down the road. State Fund encouraged SRS to study the problem, if the problems are not solved, litigation is certain. Litigation cost would be an issue and the program could be drastically impacted. The problem is the workers received welfare benefits, but they work for no wage. The standard employee/employer relationship is not met. Because the worker would be in a work place providing services to an employer, questions are raised. State Fund encouraged SRS to make an affirming decision to clarify rights and obligations of both employees and employers. The problem is cost, who pays the premium. The legislation language must be sensitive to the question of who gets the exclusive remedy.

Jacqueline Lenmark, American Insurance Association, stated she was not aware of the amendment until the hearing. **Ms. Lenmark** stated she is inclined to agree with **Mr. Wood's** comment. The better approach is to fully develop the problem and develop a solution, rather than to deal with a last moment amendment. The

issue is complex with competing issues on both sides. A full discussion of the stated issues has not been accomplished, and the discussion should take place. **Ms. Lenmark** requested the Committee defer action on the amendment at this time. **Russ Cater** apologized for bringing the amendment to the Committee at a late date. The Welfare Reform Proposal is complex, and the Department is in the process of developing work sites and encouraging employers to accept AFDC recipients the Department wants to place. SRS thought by giving the employer an option of coverage, the employers would be encouraged to take AFDC recipients. Another option that was discussed was "could the SRS cover the Workers' Compensation premiums. Could the SRS pay just the premiums." The option would not necessarily mean the on-site employer would be covered and protected from all liabilities. If the employer paid the premium, then the employer can definitely say the employee did not have any right to sue, whatsoever. The employees have to accept the remedies covered by Workers' Compensation Laws. The SRS would encourage more employers, but at the same time, SRS is considering the impact on insurers. The amendment gives the insurers the option to say "no" to the employer. The employer and the insurer would have to agree.

CHAIRMAN KEATING asked **Russ Cater** to describe the program. The Department would end up paying the wage or salary for the AFDC person, the employer actually gets the worker free of charge. **Mr. Cater** replied positively. **CHAIRMAN KEATING** asked if the Department pays the employer or the worker. **Mr. Cater** stated the Department pays the AFDC benefit, so in a sense, the Department is paying the worker, or agreeing to continue their welfare benefits. **CHAIRMAN KEATING** paraphrased the information clearly. The Department is paying welfare benefits as a wage, and the employer is giving the worker a place to function. **Mr. Cater** agreed.

David Owen, MT Chamber of Commerce, stated he reviewed the amendments yesterday and deliberated on the school to work transition regarding Workers' Compensation issues. The problem extends to cities and towns. Questions abound whether or not these kinds of worker-volunteers should be working for competitive businesses.

Closing by Sponsor:

REPRESENTATIVE ELLEN BERGMAN thanked the Committee for the lively hearing. **REPRESENTATIVE BERGMAN** stated she placed trust in the Committee for their deliberations towards an Executive Action decision. **REPRESENTATIVE BERGMAN** explained that the amendments impact the legislation and the entire welfare reformation.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE March 7, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

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2
3-7-95
HB 200

Amendments to House Bill No. 200
Third Reading Copy

Requested by Senator Wilson
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 7, 1995

1. Title, lines 11 and 12.
Following: "COMPANIES;" on line 11
Strike: remainder of line 11 through "OUT;" on line 12

2. Title, line 25.
Strike: "39-71-405,"

3. Page 13, lines 15 through 17.
Following: "department" on line 15
Insert: "and must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program"
Following: "."
Strike: remainder of line 15 through "contractor." on line 17

4. Page 13, lines 20 through 23.
Following: "(d)" on line 20
Strike: remainder of line 20 through "status." on line 23
Insert: "The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of October 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption."

5. Page 15, line 6 through page 16, line 16.
Strike: section 7 in its entirety
Renumber: subsequent sections

6. Page 27, line 18.
Strike: "10"
Insert: "9"

7. Page 27, line 20.
Strike: "18"
Insert: "17"

8. Page 27, line 22.
Strike: "25"
Insert: "24"

9. Page 27, line 25.
Strike: "13, 22, and 25 through 28"
Insert: "12, 21, and 24 through 27"

10. Page 27, line 27.
Strike: "12, 14 through 21, 23, and 24"
Insert: "11, 13 through 20, 22, and 23"

March 7, 1995

SENATE LABOR & EMPLOYMENT
EXHIBIT # 4
DATE 3-7-95
BILL NO. HB 200

Steven J. Shapiro
Montana Nurses Association

Testimony on House Bill 200
regarding the Workers Compensation Act

I am Steven Shapiro representing the Montana Nurses Association. MNA is composed of 1,400 registered professional nurses working in all phases of health care across the State of Montana.

Senate Bill 347 was passed in the 53rd Legislature amending various health care provisions in the Workers' Compensation Act. Section 39-71-116, MCA, was amended with a definition of "treating physician" to include a medical doctor, chiropractor, physician assistant, osteopath or dentist. Since the bill was enacted, it has been noted that advanced practice registered nurses were apparently inadvertently omitted from this definition.

Advanced practice registered nurses have masters degrees and provide primary health care in a variety of settings in Montana and the United States. Many of them are authorized by the State Board of Nursing as independent health care practitioners, some including the authority to prescribe medications. However, they have been denied reimbursement by workers' compensation insurers because of the oversight in Senate Bill 347 (1993).

We ask the committee to adopt the attached amendment to House Bill 200 which would add in advanced practice registered nurses in the definition of "treating physician" in Section 39-71-116, MCA.

March 7, 1995

Steven J. Shapiro
Montana Nurses Association

Amendment offerred to House Bill 200

Section 1. [amending 39-71-116, MCA]

Subsection (34)

Page 6, line 7; following "Title 37, chapter 5;" *strike* "or"

Page 6, line 8; following "Title 37, chapter 4."

insert : " ; or

"(f) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8."

-END-

OHS Occupational Health Service

A Division Of Claims Management Services

February 27, 1995

Mr. Steven Shapiro, Attorney-at-Law
Box 169
Clancy, Montana 59634

Dear Mr. Shapiro:

Thank you for taking such an active interest in Advanced Practice Nurses in the State of Montana. I am writing to you in regard to our telephone conversation of February 27, 1995 during which you asked me if I could give you examples of the Worker's Compensation injuries that I see. Before I list specific examples, I thought I would give you a little background information.

I am an Advanced Practice Nurse who is masters prepared, certified nationally as a Nurse Practitioner, been in practice for twelve years, eight of those dealing primarily with Worker's Compensation patients in an occupational health setting. Currently, I am employed by Applied Health Services, which is the for-profit arm of Northwest Healthcare (including Kalispell Regional Hospital) and work in the Occupational Health Service located in the hospital. I see corporation employees for both work related and non-work related health problems at no charge to the individual employee and independent of a physician.

Examples of work related injuries that I see are back injuries; lacerations; fractures; shoulder, ankle, and wrist strains; cumulative trauma, such as carpal tunnel syndrome, sick-building syndrome, exposure to HIV/AIDS, falls, etc. As a Nurse Practitioner, I take a health history from the patient to find out how and when the injury occurred, perform a physical examination, and determine if additional studies are needed to make a diagnosis, such as blood work to rule out arthritis or x-rays to rule out a fracture. Based on the results, I determine a treatment plan. This would include, but is not limited to, health education and counseling, writing prescriptions for medications, prescriptions for physical, occupational, or chiropractic therapy, and referrals to specialists (usually orthopedists if there is a fracture or surgery is indicated). This is all within the scope of practice of a Nurse Practitioner and done without consulting a physician.

In addition, I determine if the employees can return to work and if so, in what capacity. Perhaps modifications in the employee's job, such as a lifting restriction, needs to be made to keep the

310 Sunnyview Lane - Kalispell, MT 59901

received
3-3-95

employee safely at work and to allow them to recover from their injury. This prevents the employee from missing time from work and collecting Worker's Compensation benefits. It also shows the employee, by keeping him at work even though he is not at 100%, that he is still valuable to the corporation and not easily replaced. I follow the employee on a weekly basis in my office, sometimes more frequently, adjusting medications, treatment plans, and work restrictions depending on the employee's progress and independent of a physician. I communicate often with their supervisor and other health care providers, such as therapists, to facilitate the employee's return to pre-injury status.

In summary, Nurse Practitioners currently are providing cost effective care for the Worker's Compensation population that requires intensive management, not only of medical issues but socioeconomic and psychological concerns that affect their injuries and can prolong their entry back into the work force. Nurse Practitioners work well in interacting with other medical providers to coordinate optimum care and services for injured workers. To not include Nurse Practitioners as providers, yet to include Chiropractors and Physician's Assistants, most of whom have less training than Nurse Practitioners, does a great injustice to the public and to the taxpayer.

If I can be of any further assistance in helping you to understand the role of the Advanced Practice Nurse and specifically how this role relates to Worker's Compensation, please do not hesitate to contact me.

Sincerely,

Ann K. Ingram

Ann K. Ingram, R.N., M.S.N., C.A.N.P.
Occupational Health Service
Applied Health Services
Telephone: (406) 752-5111, Ext. 2036
Fax: (406) 756-4717

AKI/je

SRS

Amendment to House Bill #200
(RE: Workers' Compensation)
Third Reading Copy as Amended

SEN. LABOR & EMPLOYMENT
EX. 5
DATE 3-7-95
BILL NO HB 100

1. Title, line 9.
Following: "ELECTION;"
Insert: "EXEMPTING VOLUNTEERS FROM COVERAGE UNDER THE WORKERS'COMPENSATION ACT UNLESS THE EMPLOYER ELECTS TO COVER THEM;"

2. Page 7, line 22.
Following: "worker,"
Insert: "volunteer,"

3. Page 8.
Following: line 30
Insert: "(c) performing service as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), 'volunteer' means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123, and includes recipients of assistance under the aid to families with dependent children program who are performing community service work in the community service program component of the families achieving independence in Montana project and recipients of assistance under the aid to families with dependent children program participating in a work experience program."

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c)."
Renumber: subsequent sections

-End-

#6
3-7-95
BILL NO. HB200

Amendments to House Bill No. 200
Third Reading Copy

Requested by Senator Van Valkenburg
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 8, 1995

1. Page 11, line 12.
Following: "**conduct**"
Insert: "-- **exception**"

2. Page 11, line 14.
Following: "(2)"
Strike: "**A**"
Insert: "Except for a hearing before the workers' compensation court, a"

DATE March 7, 1995

SENATE COMMITTEE ON Labor Labor & Employment Relations

BILLS BEING HEARD TODAY: HB 100 HB 200

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Russ Cater	SRS	200		
[redacted]	[redacted]			
Charles R. Brooks	Yellowstone County	HB 100	✓	
George Wood	MT. Self Insurers Assn	200	✓	
Rod Sager	Dept. of Labor + Industry	100	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 3/7/95

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: ~~SB~~ HB 100, HB 200

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
CHUCK HUNTER	DEPT. OF LABOR	HB 200	✓	
Don Allen	CWCSF	HB 200	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 9, 1995, at 3:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 264
HB 432

Executive Action: HB 200

{Tape: One; Side: One}

HEARING ON HB 264

Opening Statement by Sponsor:

REPRESENTATIVE ALVIN ELLIS, HD 23, Carbon County, Bear Tooth Front, stated HB 264 is an act providing that a public employer's failure or refusal to grant a wage increase contained in an expired collective bargaining agreement does not constitute an unfair labor practice; providing an exemption for firefighters in cities of the first and second class. House Bill 264 is an amendment to the unfair labor practices act, which states nothing in the statute or any other state statute can mandate a pay raise to be included in an expired bargaining agreement. In 1983,

mesh together. **SENATOR BARTLETT** stated she did not want to find out after the session the mesh did not take place.
CHAIRMAN KEATING stated the committee, subject to the decision of the members, will be presented with a single bill. If the bill is accepted, the committee will go with the bill. If it is not accepted, the committee will go back to three bills. **REPRESENTATIVE HERRON** will be notified of the changes.

Closing by Sponsor:

REPRESENTATIVE WISEMAN stated the legislation is an attempt to combine like functions within the same department. Just because a ½ FTE is requested, it does not mean the department will receive the employee.

EXECUTIVE ACTION ON HB 200

CHAIRMAN KEATING stated the Department Health has withdrawn their amendment to HB 200. **SENATOR WILSON's** Department of Labor's amendment and **SENATOR VAN VALKENBURG'S** amendment are to be considered.

Motion:

SENATOR BENEDICT moved to AMEND HB 200.01 (EXHIBIT 5).

Discussion:

CHAIRMAN KEATING stated **Mr. Wood** is against the Shapiro Amendment and the Department of Health Amendment. **Ms. McClure** state no committee member formally asked her to prepare the stated amendments, so they were not created.

The HB 200.01 amendment was created at the request of the Department of Labor. The amendment deals with the additional $25 application fee to juice up the money at the department. **SENATOR VAN VALKENBURG** asked **Chuck Hunter** if it was his intent to not have the contractors have to pay the $25 fee and the $70 contractor fee from **SENATOR FORRESTER'S** Bill. Does the amendment address the fact that the contractors do not have to pay the $25. **Mr. Hunter** replied no.

{Tape: One; Side: Two; Approx. Counter: 29.1; Comments: Unable to hear Mr. Hunter speak.}

CHAIRMAN KEATING asked if there were additional questions. There were none.

Vote:

The motion to amend HB 200 CARRIED UNANIMOUSLY.

Discussion:

SENATOR AKLESTAD asked if the intent of the amendment was to identify that the $25 would not be needed. **SENATOR AKLESTAD** stated he would consider segregating item 3 and 4 from the amendment. Would that work. **SENATOR BENEDICT** replied No. **SENATOR VAN VALKENBURG** stated what is needed is to put in an additional statement that would read "if they could not collect the $25 from a contractor who applied at the same time under the contractor registration requirement." **SENATOR VAN VALKENBURG** stated he would suggest to **SENATOR FORRESTER** that he prepares a floor amendment to do exactly that, rather than simply rely on the administrative rule making process. **SENATOR AKLESTAD** asked what would happen if the committee took the $25 out. **SENATOR VAN VALKENBURG** replied the other independent contractors, who are not contractors, do not have to pay anything to obtain the exemption, which is really one of the major purposes of the bill. **SENATOR BENEDICT** stated he does not think it is a major purpose of the bill. It is an amendment the Department of Labor would like. If we just took out 3, we would be striking the fee. If we took out 4, we would be striking the requirement for the independent contractors to re-register with the Department on a yearly basis. The re-registration is the reason why the department needs the $25. Current law says that once the independent contractors are registered with the department, they are registered forever or until they tell the department they are no longer an independent contractor. **SENATOR AKLESTAD** suggested the amendment is just left the way it is, without the $25 fee or the requirement to re-register every year. The re-registration makes the department need the $25 to process the paper. The rest of the amendments speak to different part of the bill that needs to be addressed. For instance, the title is struck, which clarifies the liability of the employer if contracts work out. There are other parts of the amendment that are important to the bill.

SENATOR BENEDICT stated is he is correct, by taking 3 and 4 out, the contractor registration and re-registration issue would be taken care of. **Mr. Hunter** pointed out that one of the problems the department has concerning the independent contractors agreement is people get the exemption and then operate differently from how they described their operation. The situations change, but the department has no way to know. The annual registration is important, along with **SENATOR FORRESTER's** Bill. **SENATOR AKLESTAD** asked if 3 is segregated, would the department get the $25. Then, the problem can be worked out. **Mr. Hunter** stated the $25 can be removed. The work will still go on. The department will just charge the insurers for doing it, rather than charging the independent contractors. **CHAIRMAN KEATING** explained the committee heard about the self-insured fund. The entities who are insured under the State Fund and who are insured under private carriers have all complained they are paying a premium tax to fund the department. So if the department increases their expenses, the department will increase the fee on those who are buying Workers' Comp Insurance. By

charging the $25 application fee, you are charging the person who is getting the benefit from the opportunity to be an independent contractor.

SENATOR BARTLETT stated in relation to the last bill heard, the labor inspections had been funded out of the administrative assessment. The independent contractor registration had been taken out. The bills, put through during the 1993 session, carried fiscal notes and increased assessments. Those assessments have increased essentially. These are items that are relatively unrelated to the administrative fund purpose, on which the assessments are based. **SENATOR BARTLETT** stated if the committee agrees, she would like to take the action to relieve the pressure.

No substitute amendment was made.

Motion:

The motion to amend SB 200 PASSED. SENATOR AKLESTAD voted NO.

Motion:

SENATOR VAN VALKENBURG moved to amend HB 200.

Discussion :

SENATOR VAN VALKENBURG stated the amendment would provide an exception to how telephonic hearings in Workers' Compensation court cases would work. The Workers Comp. court presently travels around the state and has hearings in regional locations. The amendment makes it possible for the parties to stipulate that the telephonic hearings can be made. The state prefers to operate telephonically. **Eddye McCLure** checked with **Judge McCarter** at the workers comp court. The judge wasn't aware that the prior telephonic method was premature. **Judge McCarter** reported that the telephonic method was needed. **SENATOR AKLESTAD** stated he thought the telephonic topic was the center of discussion during the hearing. Both parties would have to agree. **SENATOR VAN VALKENBURG** stated there were two different kinds of hearings. The first kind is before the Department. The Department indicated that in most instances people want to do their businesses by the teleconference mode. If there is an extreme instance, the Department would try to accommodate their testimony. The original intent was not to include Workers' Comp. court, which is a different entity. **Ms McClure** stated the Workers' Comp. courts are administratively attached to the department. Section 318 addresses Workers' Comp. court. They have more formal hearings. The only time the video conferencing is done is when both parties make the request. During court cases, the judge needs to have video conferencing, but said to leave it the way it is, because the hearings are much more formal **(EXHIBIT 6)**.

Vote:

The Motion to amend HB 200 CARRIED UNANIMOUSLY.

Motion:

SENATOR BENEDICT moved HB 200 BE CONCURRED IN AS AMENDED.

Discussion:

SENATOR VAN VALKENBURG asked about the amendments that were withdrawn by the Department of Health. He recollected the Department of SRS was the department of origination. **SENATOR KEATING** agreed. **SENATOR VAN VALKENBURG** asked how SRS intends to deal with volunteers working for an employer. Will they be subjected to common law, tort regulations. **SENATOR BENEDICT** stated he had asked **Ms. McClure** to prepare the amendment. **Nancy Butler** and **Russ Cator** discussed the volunteer issue. They believed the welfare reform bill basically was an ongoing two year process. It will take time before they are ready to get a lot of people out of the system. Project design is necessary, as they go. As the growth takes place, they will be putting a few people "out" at a time, rather than "dumping" a whole lot people. The department thought they would have plenty of time to come up with a workable plan. They will present the plan to the 1997 legislature.

Vote:

The BE CONCURRED IN motion for HB 200 PASSED UNANIMOUSLY. SENATOR WILSON will carry the bill to the floor.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE March 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE March 9, 1995
BILL NO. HB200

Amendments to House Bill No. 200
Third Reading Copy

Requested by Senator Wilson
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 7, 1995

1. Title, lines 11 and 12.
Following: "COMPANIES;" on line 11
Strike: remainder of line 11 through "OUT;" on line 12

2. Title, line 25.
Strike: "39-71-405,"

3. Page 11, line 12.
Following: "**conduct**"
Insert: "-- **exception**"

4. Page 11, line 14.
Following: "(2)"
Strike: "A"
Insert: "Except for a hearing before the workers' compensation court, a"

5. Page 13, lines 15 through 17.
Following: "department" on line 15
Insert: "and must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program"
Following: "."
Strike: remainder of line 15 through "contractor." on line 17

6. Page 13, lines 20 through 23.
Following: "(d)" on line 20
Strike: remainder of line 20 through "status." on line 23
Insert: "The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of October 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption."

7. Page 15, line 6 through page 16, line 16.
Strike: section 7 in its entirety
Renumber: subsequent sections

8. Page 27, line 18.
Strike: "10"
Insert: "9"

9. Page 27, line 20.
Strike: "18"
Insert: "17"

10. Page 27, line 22.
Strike: "25"
Insert: "24"

11. Page 27, line 25.
Strike: "13, 22, and 25 through 28"
Insert: "12, 21, and 24 through 27"

12. Page 27, line 27.
Strike: "12, 14 through 21, 23, and 24"
Insert: "11, 13 through 20, 22, and 23"

SRS

Amendment to House Bill #200
(RE: Workers' Compensation)
Third Reading Copy as Amended

EXHIBIT 6
DATE March 9
BILL NO. HB 200

1. Title, line 9.
Following: "ELECTION;"
Insert: "EXEMPTING VOLUNTEERS FROM COVERAGE UNDER THE WORKERS'COMPENSATION ACT UNLESS THE EMPLOYER ELECTS TO COVER THEM;"

2. Page 7, line 22.
Following: "worker,"
Insert: "**volunteer,**"

3. Page 8.
Following: line 30
Insert: "(c) performing service as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), 'volunteer' means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123, and includes recipients of assistance under the aid to families with dependent children program who are performing community service work in the community service program component of the families achieving independence in Montana project and recipients of assistance under the aid to families with dependent children program participating in a work experience program."

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c)."
Renumber: subsequent sections

-End-

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Labor and Employment Relations having had under consideration HB 200 (third reading copy -- blue), respectfully report that HB 200 be amended as follows and as so amended be concurred in.

Signed: Keating
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, lines 11 and 12.
Following: "COMPANIES;" on line 11
Strike: remainder of line 11 through "OUT;" on line 12

2. Title, line 25.
Strike: "39-71-405,"

3. Page 11, line 12.
Following: "**conduct**"
Insert: "-- **exception**"

4. Page 11, line 14.
Following: "(2)"
Strike: "A"
Insert: "Except for a hearing before the workers' compensation court, a"

5. Page 13, lines 15 through 17.
Following: "department" on line 15
Insert: "and must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program"
Following: "."
Strike: remainder of line 15 through "contractor." on line 17

6. Page 13, lines 20 through 23.
Following: "(d)" on line 20
Strike: remainder of line 20 through "status." on line 23
Insert: "The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of October 1, 1995, or thereafter. The renewal application and the $25 renewal

application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption."

7. Page 15, line 6 through page 16, line 16.
Strike: section 7 in its entirety
Renumber: subsequent sections

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Strike: "10"
Insert: "9"

9. Page 27, line 20.
Strike: "18"
Insert: "17"

10. Page 27, line 22.
Strike: "25"
Insert: "24"

11. Page 27, line 25.
Strike: "13, 22, and 25 through 28"
Insert: "12, 21, and 24 through 27"

12. Page 27, line 27.
Strike: "12, 14 through 21, 23, and 24"
Insert: "11, 13 through 20, 22, and 23"

-END-

HOUSE BILL NO. 200

INTRODUCED BY BERGMAN, HIBBARD, BENEDICT, BARTLETT, COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; ~~CLARIFYING THE LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT;~~ CLARIFYING THE DEPARTMENT'S RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES; PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315, 39-71-318, 39-71-401, ~~39-71-405,~~ 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507, 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103, 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Aid or sustenance" means any public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the ~~Montana~~ department ~~of labor and industry~~. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(3)~~(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

~~(4)~~(5) "Casual employment" means employment not in the usual course of trade, business,

profession, or occupation of the employer.

~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(6)~~(7) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

~~(8)~~(9) "Department" means the department of labor and industry.

~~(9)~~(10) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.

~~(10)~~(11) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(12) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(11)~~(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(12)~~(14) "Invalid" means one who is physically or mentally incapacitated.

(15) "Limited liability company" is as defined in 35-8-102.

~~(13)~~(16) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(14)~~(17) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(18)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum medical healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity, but the physical restriction impairs the worker's ability to work.

~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

city, city under a commission form of government or special charter, town, or village.

~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~as~~ that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(28)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(31)~~(35) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies ~~therein~~ and ~~every~~ each person, ~~every~~ each prime contractor, and ~~every~~ each firm, voluntary association, limited liability company, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee ~~thereof~~;

(b) any association, corporation, limited liability company, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, or corporation, other than a

temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, limited liability company, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 3. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has

elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership, ~~or~~ sole ~~proprietorship~~ proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, ~~or~~ the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, ~~or~~ proprietorship, or limited liability company business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners, ~~or~~ sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, ~~or~~ sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1½ times the average weekly wage, as defined in this chapter.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

less than $200 a week and not more than 1½ times the average weekly wage, as defined in this chapter.

~~(5)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

~~(6)~~(7) An employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(8)~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the election under subsection ~~(7)(d)~~ (8)(d)."

Section 4. Section 39-71-315, MCA, is amended to read:

"**39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which

compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 5. Section 39-71-318, MCA, is amended to read:

"**39-71-318. Hearings -- rules of evidence -- conduct -- EXCEPTION.** (1) The statutory and ~~common law~~ common-law rules of evidence do not apply to a hearing before the department under this chapter.

(2) ~~A~~ EXCEPT FOR A HEARING BEFORE THE WORKERS' COMPENSATION COURT, A hearing under this chapter may be conducted by telephone or by videoconference."

Section 6. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be

claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of ~~any~~ a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with ~~any~~ a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) ~~any~~ employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited

liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, ~~or~~ a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department AND MUST BE ACCOMPANIED BY A $25 APPLICATION FEE. THE APPLICATION FEE MUST BE DEPOSITED IN THE ADMINISTRATION FUND ESTABLISHED IN 39-71-201 TO OFFSET THE COSTS OF ADMINISTERING THE PROGRAM. ~~The department may deny the application only if it determines that the applicant is not an independent contractor.~~

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) ~~When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR 1 YEAR FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL ANNUALLY SUBMIT A RENEWAL APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR EXEMPTIONS APPROVED AS OF OCTOBER 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND THE $25 RENEWAL

APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

(E) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION CONCERNING THAT PERSON'S STATUS AS AN EXEMPT INDEPENDENT CONTRACTOR IS SUBJECT TO A CIVIL PENALTY OF $1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.

~~(e)~~(F) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A ~~private~~ corporation or a manager-managed limited liability company shall provide coverage for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of~~ A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect ~~not to be bound as an employee under this chapter~~ coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice~~, on a form provided by the department, served~~ in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company ~~employer and to the department~~; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company ~~employer, to the department,~~ and to the insurer.

(b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not effective and the ~~officer~~ employer shall again serve notice ~~as provided~~ to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the ~~officer~~ employer elects ~~not~~ to be bound.

~~(e)~~(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of ~~excluding~~

exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager ~~to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202 if the officer falsifies the notice~~ to exemption from coverage.

~~(5)~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

~~**Section 7.** Section 39-71-405, MCA, is amended to read:~~

~~"**39-71-405. Liability of employer who contracts work out -- EXCEPTION.** (1) An EXCEPT AS PROVIDED IN SUBSECTION (4), AN employer who contracts with an independent contractor to have work performed of a kind which that is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such the employer is liable for the payment of benefits under this chapter to the employees of the contractor or the subcontractor if the contractor or subcontractor has not properly complied with the coverage requirements of the Worker's Workers' Compensation Act. Any An insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor or subcontractor primarily liable therein.~~

~~(2) Where When an employer contracts to have any work to be done by a contractor, other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall may not be construed to be casual employment. Where When an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.~~

~~(3) Where When an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where when the work so contracted to be done is casual employment as to such the employer, then the contractor shall become is the employer for the purposes of this chapter.~~

~~(4) (A) AN EMPLOYER IS NOT LIABLE FOR INJURIES INCURRED BY ANYONE WORKING FOR AN INDEPENDENT CONTRACTOR IF THE EMPLOYER, AT THE TIME THAT A CONTRACT IS EXECUTED WITH AN INDEPENDENT CONTRACTOR, VERIFIES IN A NOTARIZED WRITING SIGNED BY BOTH THE EMPLOYER AND THE CONTRACTOR THAT:~~

~~(I) THE CONTRACTOR HAS PROVIDED TO THE EMPLOYER A COPY OF THE CURRENT INDEPENDENT CONTRACTOR EXEMPTION ISSUED BY THE DEPARTMENT PURSUANT TO 39-71-401(3) FOR THE TYPE OF WORK THAT THE CONTRACTOR WILL BE DOING FOR THE EMPLOYER; AND~~

~~(II) THE CONTRACTOR:~~

~~(A) HAS STATED, UNDER PENALTY OF PERJURY, THAT THE CONTRACTOR WILL PERSONALLY PERFORM ALL OF THE WORK REQUIRED OF THE CONTRACTOR BY THE CONTRACT WITHOUT HIRING ANY EMPLOYEE, ASSISTANT, OR SUBCONTRACTOR WHO IS NOT COVERED BY WORKERS' COMPENSATION INSURANCE; OR~~

~~(B) HAS PROVIDED TO THE EMPLOYER A CERTIFICATE OF CURRENT WORKERS' COMPENSATION INSURANCE COVERAGE FOR THE CONTRACTOR'S EMPLOYEES.~~

~~(B) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION IN CONNECTION WITH THE WRITTEN STATEMENT PROVIDED FOR IN SUBSECTION (4)(A) IS SUBJECT TO A CIVIL PENALTY OF $1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.~~

~~(5) IF A DISPUTE ARISES CONCERNING WHETHER AN EMPLOYER IS ENTITLED TO THE DEFENSE PROVIDED IN SUBSECTION (4), THE EMPLOYER HAS THE BURDEN OF PROVING COMPLIANCE WITH THE PROVISIONS OF SUBSECTION (4).~~"

Section 7. Section 39-71-432, MCA, is amended to read:

"**39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, joint venture, association, or other

business entity.

(2) "Group" means two or more business entities that join together with the approval of the department to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

Section 8. Section 39-71-433, MCA, is amended to read:

"**39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of the department, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) To be eligible to join a new group that is forming, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.

(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.

(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.

(5) A group certified under this section may add additional members without approval from the department if the additional members meet the specific criteria identified in the original application and any modifications to the criteria, as approved by the department.

~~(5)~~(6) A group certified under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

~~(6)~~(7) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

~~(7)~~(8) A group shall adopt a plan of operation that must include the composition and selection of

a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department."

Section 9. Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~ payments ~~as~~ that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. ~~No lump sum~~ Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of administration of the fund must be paid out of the money in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 10. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund -- option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

(2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.~~

~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.~~

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ must be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

Section 11. Section 39-71-507, MCA, is amended to read:

"**39-71-507. Department to order uninsured employer to cease operations -- noncompliance with order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it may order the person, business, or other entity functioning as a prime contractor to ~~cease~~ CAUSE all operations PERFORMED BY THE UNINSURED EMPLOYER TO CEASE AT WORKSITES CONTROLLED BY THE PRIME CONTRACTOR until the uninsured employer has elected to be bound by a compensation plan. IF AFTER 3 BUSINESS DAYS FOLLOWING THE ORDER BY THE DEPARTMENT THE PERSON, BUSINESS, OR OTHER ENTITY FUNCTIONING AS A PRIME CONTRACTOR HAS NOT COMPLIED WITH THE ORDER, THE DEPARTMENT MAY ORDER THE PRIME CONTRACTOR TO CEASE ALL OPERATIONS AT THE AFFECTED WORKSITES.

~~(2)~~(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from

enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than $1,000 per day for each day of violation.

~~(3)~~(5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

~~(4)~~(6) The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ (3) through (5) of this section are not mutually exclusive and may be pursued concurrently."

Section 12. Section 39-71-516, MCA, is amended to read:

"**39-71-516. District court venue and jurisdiction for independent cause of action.** An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 ~~must~~ shall bring ~~such~~ the action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant ~~such~~ interim relief ~~as~~ that it considers appropriate, including but not limited to injunctive relief, attachment, or receivership. The court may request the workers' compensation judge to determine the amount of recoverable damages due to the employee."

Section 13. Section 39-71-710, MCA, is amended to read:

"**39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~ permanent total disability~~,~~ and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 14. Section 39-71-721, MCA, is amended to read:

"**39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies

and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of ~~his~~ death.

(3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary ~~as defined in 39-71-116~~, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

(6) In all cases, benefits must be paid to beneficiaries~~, as defined in 39-71-116~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages~~

~~at the time of death.~~"

Section 15. Section 39-71-723, MCA, is amended to read:

"**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ when there is more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof shall be~~ is a question of fact for determination by the department."

Section 16. Section 39-71-737, MCA, is amended to read:

"**39-71-737. Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits~~, and wage supplement and partial rehabilitation benefits may be paid concurrently~~."

Section 17. Section 39-71-902, MCA, is amended to read:

"**39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers.** (1) In ~~every~~ each case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess ~~every~~ each insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 18. Section 39-71-1108, MCA, is amended to read:

"**39-71-1108. Physician self-referral prohibition.** (1) Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

(2) Subsection (1) does not apply to care or services provided directly to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 19. Section 39-71-2103, MCA, is amended to read:

"**39-71-2103. Employer permitted to carry on business and settle directly with employee -- individual liability.** (1) If ~~such~~ the employer making ~~such~~ the election ~~shall be~~ is found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on ~~his~~ business for the ~~fiscal~~ year within which ~~such~~ the election is made and ~~such~~ proof filed, or the remaining portion of ~~such~~ the ~~fiscal~~ year, and to make ~~such~~ payments directly to ~~his~~ the employees as they may become entitled to receive the ~~same~~ payments.

(2) Each individual employer in an association, corporation, limited liability company, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, limited liability company, or organization under this chapter. An association, corporation, limited liability company, or organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability coverage in amounts and under ~~such~~ conditions as provided by rules of the department."

Section 20. Section 39-71-2411, MCA, is amended to read:

"**39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, ~~he~~ the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within ~~45~~ ~~20~~ 25 days of the mailing of ~~his~~ the mediator's report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Section 21. Section 39-71-2905, MCA, is amended to read:

"**39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute

concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71."

Section 22. Section 39-72-601, MCA, is amended to read:

"**39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the presiding officer."

Section 23. Section 39-72-602, MCA, is amended to read:

"**39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and

is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the department. ~~When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~ may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the claimant's attending physician. The reports from the two examining physicians must be sent by the department to the presiding officer of the panel. The ~~three panel members~~ presiding officer shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) (i) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician.

(ii) If a second examination is requested, the department shall issue its order based on the report of the ~~three members of the medical panel~~ presiding officer.

~~(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ presiding officer has examined the claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third member~~ presiding officer."

Section 24. Section 39-72-612, MCA, is amended to read:

"39-72-612. Hearing and appeal to workers' compensation judge. (1) Within 20 days after the department has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation judge, the appealing party shall request a hearing before the department. The department shall grant a

hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final determination may not be issued until after the hearing.

(2) Appeals from a final determination of the department must be made to the workers' compensation judge within 30 days after the department has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the department only on the basis that the department's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

NEW SECTION. **Section 25. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 27. Applicability.** (1) [Section ~~10~~ 9] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

(2) [Section ~~18~~ 17] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning after October 1, 1973.

(3) [Sections 5 and ~~25~~ 24] apply to hearings or appeals requested on or after [the effective date

of this act].

NEW SECTION. **Section 28. Effective dates.** (1) [Sections 5, ~~13, 22, and 25 through 28~~ 12, 21, AND 24 THROUGH 27 and this section] are effective on passage and approval.

(2) [Sections 1 through 4, 6 through ~~12, 14 through 21, 23, and 24~~ 11, 13 THROUGH 20, 22, AND 23] are effective October 1, 1995.

-END-

FREE CONFERENCE COMMITTEE

on House Bill 200
Report No. , April 7, 1995

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 200** and recommend as follows:

1. Page 13, line 16.
Strike: "AND"
Insert: ". There is no fee for the initial application. Any subsequent application"

2. Page 13, line 30.
Strike: "OCTOBER"
Insert: "July"

3. Page 28, lines 5 and 6.
Following: "4"
Strike: remainder of line 5 and line 6 in their entirety
Insert: "and 6 are effective July 1, 1995.
(3) [Sections 7 through 11, 13 through 20, 22, and 23] are effective October 1, 1995."

We recommend that the amendments considered above to House Bill 200 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

For the House:
Ellis
Chair
Bergman
Cocchiarella

For the Senate:
~~Benedict~~ SRB
Chair
~~Harp~~ SRB
Forrester

ADOPT

REJECT

HB 200
FCCR#1
801149CC.Hbk

HOUSE BILL NO. 200

INTRODUCED BY BERGMAN, HIBBARD, BENEDICT, BARTLETT, COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; ~~CLARIFYING THE LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT;~~ CLARIFYING THE DEPARTMENT'S RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES; PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315, 39-71-318, 39-71-401, ~~39-71-405,~~ 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507, 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103, 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

REFERENCE BILL: INCLUDES FREE CONFERENCE COMMITTEE REPORT DATED 4-7-95

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Aid or sustenance" means any public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the ~~Montana~~ department ~~of labor and industry~~. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(3)~~(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

~~(4)~~(5) "Casual employment" means employment not in the usual course of trade, business,

profession, or occupation of the employer.

~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(6)~~(7) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

~~(8)~~(9) "Department" means the department of labor and industry.

~~(9)~~(10) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.

~~(10)~~(11) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(12) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(11)~~(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(12)~~(14) "Invalid" means one who is physically or mentally incapacitated.

(15) "Limited liability company" is as defined in 35-8-102.

~~(13)~~(16) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(14)~~(17) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(18)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum medical healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity, but the physical restriction impairs the worker's ability to work.

~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

city, city under a commission form of government or special charter, town, or village.

~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~as~~ that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(28)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(31)~~(35) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies ~~therein~~ and ~~every~~ each person, ~~every~~ each prime contractor, and ~~every~~ each firm, voluntary association, limited liability company, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee ~~thereof~~;

(b) any association, corporation, limited liability company, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, or corporation, other than a

temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, limited liability company, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 3. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The ~~terms~~ term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has

elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership, ~~or~~ sole ~~proprietorship~~ proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, ~~or~~ the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, ~~or~~ proprietorship, or limited liability company business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners, ~~or~~ sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, ~~or~~ sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1½ times the average weekly wage, as defined in this chapter.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

less than $200 a week and not more than 1½ times the average weekly wage, as defined in this chapter.

~~(5)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

~~(6)~~(7) An employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(8)~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the election under subsection ~~(7)(d)~~ (8)(d)."

Section 4. Section 39-71-315, MCA, is amended to read:

"**39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which

compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 5. Section 39-71-318, MCA, is amended to read:

"**39-71-318. Hearings -- rules of evidence -- conduct -- EXCEPTION.** (1) The statutory and ~~common law~~ common-law rules of evidence do not apply to a hearing before the department under this chapter.

(2) ~~A~~ EXCEPT FOR A HEARING BEFORE THE WORKERS' COMPENSATION COURT, A hearing under this chapter may be conducted by telephone or by videoconference."

Section 6. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be

claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of ~~any~~ a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with ~~any~~ a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) ~~any~~ employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited

liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, ~~or~~ a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department ~~AND~~. THERE IS NO FEE FOR THE INITIAL APPLICATION. ANY SUBSEQUENT APPLICATION MUST BE ACCOMPANIED BY A $25 APPLICATION FEE. THE APPLICATION FEE MUST BE DEPOSITED IN THE ADMINISTRATION FUND ESTABLISHED IN 39-71-201 TO OFFSET THE COSTS OF ADMINISTERING THE PROGRAM. ~~The department may deny the application only if it determines that the applicant is not an independent contractor.~~

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) ~~When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR 1 YEAR FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL ANNUALLY SUBMIT A RENEWAL APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR EXEMPTIONS APPROVED

AS OF ~~OCTOBER~~ JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND THE $25 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

(E) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION CONCERNING THAT PERSON'S STATUS AS AN EXEMPT INDEPENDENT CONTRACTOR IS SUBJECT TO A CIVIL PENALTY OF $1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.

~~(c)~~(F) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A ~~private~~ corporation or a manager-managed limited liability company shall provide coverage for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of~~ A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect ~~not to be bound as an employee under this chapter~~ coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice~~, on a form provided by the department, served~~ in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company ~~employer and to the department~~; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company ~~employer, to the department,~~ and to the insurer.

(b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not effective and the ~~officer~~ employer shall again serve notice ~~as provided~~ to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the ~~officer~~ employer elects ~~not~~ to be bound.

~~(c)~~(5) The appointment or election of an employee as an officer of a corporation, a partner in a

partnership, or a member in or a manager of a limited liability company for the purpose of ~~excluding~~ exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager ~~to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202 if the officer falsifies the notice~~ to exemption from coverage.

~~(5)~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

~~**Section 7.** Section 39-71-405, MCA, is amended to read:~~

~~**"39-71-405. Liability of employer who contracts work out -- EXCEPTION.** (1) An EXCEPT AS PROVIDED IN SUBSECTION (4), AN employer who contracts with an independent contractor to have work performed of a kind which that is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such the employer is liable for the payment of benefits under this chapter to the employees of the contractor or the subcontractor if the contractor or subcontractor has not properly complied with the coverage requirements of the Worker's Workers' Compensation Act. Any An insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor or subcontractor primarily liable therein.~~

~~(2) Where When an employer contracts to have any work to be done by a contractor, other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall may not be construed to be casual employment. Where When an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under~~

~~that plan of compensation adopted by the employer.~~

~~(3) Where~~ When ~~an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where~~ when ~~the work so contracted to be done is casual employment as to such~~ the ~~employer, then the contractor shall become~~ is ~~the employer for the purposes of this chapter.~~

~~(4) (A) AN EMPLOYER IS NOT LIABLE FOR INJURIES INCURRED BY ANYONE WORKING FOR AN INDEPENDENT CONTRACTOR IF THE EMPLOYER, AT THE TIME THAT A CONTRACT IS EXECUTED WITH AN INDEPENDENT CONTRACTOR, VERIFIES IN A NOTARIZED WRITING SIGNED BY BOTH THE EMPLOYER AND THE CONTRACTOR THAT:~~

~~(I) THE CONTRACTOR HAS PROVIDED TO THE EMPLOYER A COPY OF THE CURRENT INDEPENDENT CONTRACTOR EXEMPTION ISSUED BY THE DEPARTMENT PURSUANT TO 39-71-401(3) FOR THE TYPE OF WORK THAT THE CONTRACTOR WILL BE DOING FOR THE EMPLOYER; AND~~

~~(II) THE CONTRACTOR:~~

~~(A) HAS STATED, UNDER PENALTY OF PERJURY, THAT THE CONTRACTOR WILL PERSONALLY PERFORM ALL OF THE WORK REQUIRED OF THE CONTRACTOR BY THE CONTRACT WITHOUT HIRING ANY EMPLOYEE, ASSISTANT, OR SUBCONTRACTOR WHO IS NOT COVERED BY WORKERS' COMPENSATION INSURANCE; OR~~

~~(B) HAS PROVIDED TO THE EMPLOYER A CERTIFICATE OF CURRENT WORKERS' COMPENSATION INSURANCE COVERAGE FOR THE CONTRACTOR'S EMPLOYEES.~~

~~(B) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION IN CONNECTION WITH THE WRITTEN STATEMENT PROVIDED FOR IN SUBSECTION (4)(A) IS SUBJECT TO A CIVIL PENALTY OF $1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.~~

~~(5) IF A DISPUTE ARISES CONCERNING WHETHER AN EMPLOYER IS ENTITLED TO THE DEFENSE PROVIDED IN SUBSECTION (4), THE EMPLOYER HAS THE BURDEN OF PROVING COMPLIANCE WITH THE PROVISIONS OF SUBSECTION (4).~~"

Section 7. Section 39-71-432, MCA, is amended to read:

"**39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation,

organization, business trust, trust, partnership, limited liability company, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together with the approval of the department to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

Section 8. Section 39-71-433, MCA, is amended to read:

"**39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of the department, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) To be eligible to join a new group that is forming, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.

(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.

(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.

(5) A group certified under this section may add additional members without approval from the department if the additional members meet the specific criteria identified in the original application and any modifications to the criteria, as approved by the department.

~~(5)~~(6) A group certified under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

~~(6)~~(7) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

~~(7)~~(8) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department."

Section 9. Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~ payments ~~as~~ that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. ~~No lump sum~~ Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of administration of the fund must be paid out of the money in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 10. Section 39-71-504, MCA, is amended to read:

"**39-71-504. Funding of fund -- option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

(2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured~~

~~employer's liability under this subsection (2)(a) may not exceed $50,000.~~

~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.~~

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ must be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

Section 11. Section 39-71-507, MCA, is amended to read:

"**39-71-507. Department to order uninsured employer to cease operations -- noncompliance with order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it may order the person, business, or other entity functioning as a prime contractor to ~~cease~~ CAUSE all operations PERFORMED BY THE UNINSURED EMPLOYER TO CEASE AT WORKSITES CONTROLLED BY THE PRIME CONTRACTOR until the uninsured employer has elected to be bound by a compensation plan. IF AFTER 3 BUSINESS DAYS FOLLOWING THE ORDER BY THE DEPARTMENT THE PERSON, BUSINESS, OR OTHER ENTITY FUNCTIONING AS A PRIME CONTRACTOR HAS NOT COMPLIED WITH THE ORDER, THE DEPARTMENT MAY ORDER THE PRIME CONTRACTOR TO CEASE ALL OPERATIONS AT THE AFFECTED WORKSITES.

~~(2)~~(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county

in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than $1,000 per day for each day of violation.

~~(3)~~(5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

~~(4)~~(6) The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ (3) through (5) of this section are not mutually exclusive and may be pursued concurrently."

Section 12. Section 39-71-516, MCA, is amended to read:

"**39-71-516. District court venue and jurisdiction for independent cause of action.** An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 ~~must~~ shall bring ~~such~~ the action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant ~~such~~ interim relief ~~as~~ that it considers appropriate, including but not limited to injunctive relief, attachment, or receivership. The court may request the workers' compensation judge to determine the amount of recoverable damages due to the employee."

Section 13. Section 39-71-710, MCA, is amended to read:

"**39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~ permanent total disability~~,~~ and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 14. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of ~~his~~ death.

(3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary ~~as defined in 39-71-116~~, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

(6) In all cases, benefits must be paid to beneficiaries~~, as defined in 39-71-116~~.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's~~

~~average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death.~~"

Section 15. Section 39-71-723, MCA, is amended to read:

"**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ when there is more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof shall be~~ is a question of fact for determination by the department."

Section 16. Section 39-71-737, MCA, is amended to read:

"**39-71-737. Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits~~, and wage supplement and partial rehabilitation benefits may be paid concurrently~~."

Section 17. Section 39-71-902, MCA, is amended to read:

"**39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers.** (1) In ~~every~~ each case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess ~~every~~ each insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time

determined by the department."

Section 18. Section 39-71-1108, MCA, is amended to read:

"39-71-1108. Physician self-referral prohibition. (1) Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

(2) Subsection (1) does not apply to care or services provided directly to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 19. Section 39-71-2103, MCA, is amended to read:

"39-71-2103. Employer permitted to carry on business and settle directly with employee -- individual liability. (1) If ~~such~~ the employer making ~~such~~ the election ~~shall be~~ is found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on ~~his~~ business for the ~~fiscal~~ year within which ~~such~~ the election is made and ~~such~~ proof filed, or the remaining portion of ~~such~~ the ~~fiscal~~ year, and to make ~~such~~ payments directly to ~~his~~ the employees as they may become entitled to receive the ~~same~~ payments.

(2) Each individual employer in an association, corporation, limited liability company, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, limited liability company, or organization under this chapter. An association, corporation, limited liability company, or organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability coverage in amounts and under ~~such~~ conditions as provided by rules of the department."

Section 20. Section 39-71-2411, MCA, is amended to read:

"39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for

mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, ~~he~~ the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within ~~45~~ ~~20~~ 25 days of the mailing of ~~his~~ the mediator's report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Section 21. Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71."

Section 22. Section 39-72-601, MCA, is amended to read:

"39-72-601. Medical panel. (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the presiding officer."

Section 23. Section 39-72-602, MCA, is amended to read:

"39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the department. ~~When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~ may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the claimant's attending physician. The reports from the two examining physicians must be sent by the department to the presiding officer of the panel. The ~~three panel members~~ presiding officer shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) (i) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician.

(ii) If a second examination is requested, the department shall issue its order based on the report of the ~~three members of the medical panel~~ presiding officer.

~~(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ presiding officer has examined the claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third member~~ presiding officer."

Section 24. Section 39-72-612, MCA, is amended to read:

"39-72-612. Hearing and appeal to workers' compensation judge. (1) Within 20 days after the department has issued its order of determination as to whether the claimant is entitled to benefits under

this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation judge, the appealing party shall request a hearing before the department. The department shall grant a hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final determination may not be issued until after the hearing.

(2) Appeals from a final determination of the department must be made to the workers' compensation judge within 30 days after the department has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the department only on the basis that the department's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

NEW SECTION. **Section 25. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 27. Applicability.** (1) [Section ~~10~~ 9] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

(2) [Section ~~18~~ 17] applies retroactively, within the meaning of 1-2-109, to all occurrences

beginning after October 1, 1973.

(3) [Sections 5 and ~~25~~ 24] apply to hearings or appeals requested on or after [the effective date of this act].

NEW SECTION. **Section 28. Effective dates.** (1) [Sections 5, ~~13, 22, and 25 through 28~~ 12, 21, AND 24 THROUGH 27 and this section] are effective on passage and approval.

(2) [Sections 1 through ~~4, 6 through 12, 14 through 21, 23, and 24~~ 11, 13 THROUGH 20, 22, ~~AND 23~~] ~~are effective October 1, 1995~~ AND 6 ARE EFFECTIVE JULY 1, 1995.

(3) [SECTIONS 7 THROUGH 11, 13 THROUGH 20, 22, AND 23] ARE EFFECTIVE OCTOBER 1, 1995.

-END-